LIVING WITH THE RULES: THE RULE OF LAW AND GENDER IN HERODOTUS' *HISTORIES*

by

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ABSTRACT

In this thesis, I take a gender perspective to consider how Herodotus presents the rule of law in the *Histories*. Demaratus introduces Xerxes to the Spartan military *nomos* which compels men to 'win or die', making it an external despotic force to be feared more than the command of a tyrant. However, Herodotus as narrator observes that people have an internal attachment to their own rules, which include the regulation of gender performance and involve women as much as men. I show that, although most women were excluded from legal and political institutions, devalued by gender ideology, and prevented from exercising power, they were involved in the regulation of everyday life, which is a key aspect of the rule of law in the *Histories*. I adopt a socio-legal methodology to examine how women and men live with a variety of rules, political, religious and social, and adopt a range of strategies to do so.

The rule of law is also a normative ideal which is used by Herodotus to interrogate power, in particular the *nomos* of tyranny. I use a range of case studies to show how a focus on gender helps us to think about abuse of power, excess and arbitrariness. For Herodotus, respect for *nomos* is necessary whatever one's status and gender, and operates within a network of relationships, depends on the performance of appropriate roles and is contingent on reciprocity. I argue that the rule of law is a powerful force in the *Histories* precisely because it combines external coercive force, internal rule of conduct and normative ideal.

DEDICATION

This thesis is in memory of Dr Niall Livingstone, an outstanding scholar, a remarkable man and a committed feminist. I regret that he never had a chance to read the final work.

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This thesis is the product of my study of Herodotus over the last ten years, and my interest in law and gender over my adult life. My supervisor Niall Livingstone shared this interest, and my excitement in bringing it to the *Histories*. His passionate engagement with scholarship has been an inspiration to me and I dedicate this thesis to his memory. I thank also Elena Theodorakopoulos for her considerable help in structuring my thesis, and reminding me that I needed to write as an academic not as a lawyer. Will Mack has also given invaluable help as my supervisor more recently in bringing the thesis to completion and giving me very detailed and helpful feedback.

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Thanks are also due to Errietta Bissa, University of Wales, Trinity St David, who supervised my M.A. dissertation, discussed Herodotus with me, and encouraged me to 'blow my own trumpet', and to the legal historians at a conference in Warsaw in June 2018 on 'Norms and Legal Practice: There and Back Again' for their constructive and helpful comments on my presentation, which introduced the arguments in this thesis to a wider audience.

I teach a module at the Birmingham Law School on ‘Legal Skills and Methods’ and, in our first seminar, we discuss the following questions: What is law? What is law for? Where does law come from? How does law change? These are all questions I deal with in my thesis, so I thank all the students and staff on that module for helping me to think about these questions, challenge my preconceptions and stimulate my interest in ‘law in action’.

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LIVING WITH THE RULES: THE RULE OF LAW AND GENDER IN HERODOTUS' *HISTORIES*

INTRODUCTION

1. Argument

> At the heart of the concept of the rule of law is the idea that society is governed by law.[1]
>
> I think Pindar was right to say in his poem that law is king of all
> ὀρθῶς μοι δοκέει Πίνδαρος ποιῆσαι νόμον πάντων βασιλέα φήσας εἶναι (3.38.4)[2]

In this thesis, I investigate Herodotus' concept of the rule of law, and argue that he is committed, like Lord Reed, to the idea that society is governed by law. The rule of law is a fundamental principle in the *Histories*, which Herodotus uses as part of his *historiē* to evaluate, as well as describe, events and characters, to interrogate questions on justice, law and its role in a community, and to show that everyone, whether tyrant or slave, male or female, Greek or non-Greek, must live with the rules.

I argue that the rule of law has three strands. It is an external coercive force which acts as a constraint on women, as well as other subaltern groups, by excluding them from legal and political institutions within which they have no agency or authority. However, the rule of law

[1] Lord Reed in *R (Unison) v Lord Chancellor* [2017] UKSC 51: [68].
[2] Herodotus, *Histories*. All references are to Herodotus' *Histories*, except where reference is made to other texts where a full citation will be given. Translations are my own, made in consultation with the editions and translations listed in the bibliography.

also operates as an agent of social cohesion, identity and control within communities, in which women in the *Histories* feature prominently as actors, speakers and figures of authority as well as voiceless victims of male power. Finally, the rule of law in the *Histories* is a normative ideal which applies to everyone, whatever their gender or status. The unequal position of women, both institutionally and ideologically, means that men in power are often shown to underestimate female capacity to make judgments, to act rationally or strategically, or to influence events. As a consequence, they ignore the rules which regulate their relationships with women and suffer accordingly. The rule of law also operates in a world 'permeated by the divine' in which the gods are believed to punish those who ignore limits which are implicit in the unwritten laws of the gods and of communities, who exercise power in an arbitrary way, and who show excessive confidence in their own abilities and powers.[3]

I take a novel approach in that I consider the rule of law in the *Histories* from a gender perspective. I argue that law is as much about the regulation of social and cultural life, which involves women as much as men, and is part of everyday life, as it is about institutional practices which exclude women and reinforce an ideology of female inferiority, and I show that Herodotus uses the principle of the rule of law to interrogate power. I propose a wider model of the rule of law than the one used by most modern scholars. I argue that, if we view the rule of law through the prism of gender, we can fully appreciate that it is a powerful force in the *Histories* precisely because it combines external coercive force (law as despot), internal rule of conduct (law as king) and normative ideal.

[3] Cairns 2019: 87-91(quotation).

In my introduction, therefore, I will review scholarship on the rule of law in ancient Greece, arguing that, in relation to Herodotus' *Histories*, we can only make sense of gender in relation to law if we adopt a much wider definition of law than the one embedded in institutions such as the law court, in which adversarial litigation is the norm and which uses the speeches of the forensic orators in 4th century BCE Athens as its source material, appropriate for a study of Athenian law. I use the theoretical model of law developed by H. L. A. Hart, and apply his argument, that rules have a social as well as a legal dimension, to my analysis. I also use the work of the legal realists, the model of legal pluralism, and feminist legal theory to argue for a definition of the rule of law which applies to everyday life as well as to formal institutions. Finally, I apply a sociological model to the question of how to 'live with' the rule of law, arguing that, for Herodotus, *nomos* is king precisely because it is multi-faceted. It acts as a restraint on those who think the rules do not apply to them, it also reflects law in action, where rules can be manipulated and played with as well as obeyed, and it encompasses the rules of everyday life, which women as well as men enforce, and which apply to the domestic as much as the public sphere, as well as the institutional rules which exclude them.

I will also review scholarship on the topic of women in Herodotus, arguing that a gender rather than a female perspective is preferable, since Herodotus shows men as well as women having to perform prescribed gender roles, and being influenced by gender stereotypes which Herodotus shows are often misleading. I consider not only the content of gender norms but also how those norms are applied in practice. I argue that a polarity approach to gender, based on the binary opposition of men and women, does not reflect accurately the range of roles performed by both genders in the *Histories*, for example, in negotiating hierarchies within the royal *oikos*. I argue that Herodotus destabilises the binary opposition of male and female by

showing the disjuncture between the rhetoric of female inferiority and the agency and authority of some women in his wider narrative, by characterising men and women in a nuanced and complex way, and by showing men who do not live up to gender expectations, as well as women who defy those expectations.

Herodotus shows gender to be a social construct, rather than an innate characteristic of men and women, by making the performance of gender a *nomos* which is changeable, can be deceptive and depends on the judgment of others, thereby conflicting with ideological constructs which posit the essential difference between male and female. Nevertheless, the binary opposition of male and female is a key signifier in the *Histories* of relationships of power, supported by an ideology in which the male/female divide is 'outside human construction, part of the natural or divine order'.[4] I will, therefore, address the tension between practice and ideology when considering relationships of power between men, and between women, as well as between men and women.[5]

2. Scope and Evidence

My subject matter is the rule of law and gender in Herodotus' *Histories* and my focus is on how both women and men 'live with the rules'. My approach, therefore, is a socio-legal one, analysing how Herodotus shows law embedded in its social and cultural context. I base this thesis on the text constructed by Herodotus; he is responsible for the narrative, characterisation of groups and individuals, and the speech he gives to some of them. I consider Xerxes, therefore, as a character in Herodotus' text, not the historical figure. Similarly, the Amazons in the *Histories*, I will argue, are not intended by Herodotus to reflect

[4] Scott 1986: 1073.
[5] Griffin 2018: 377.

the historical reality of a nomadic society in which women exercised power but to be a thought experiment on difference. In this thesis, I use 'narrator' in the narratological sense. Herodotus is the 'representative of the author in the text' who gives us an 'external' view of the *nomoi* he investigates, though he often relates the 'internal' view of his characters. He tells his story after the event, using prolepses to anticipate outcomes, he also displays his travels and his research and from time to time presents his own arguments and conclusions, as narrator.[6]

I have chosen to focus on *nomos* because it is a recurrent theme in the *Histories*, and on two occasions it is described as a rule, firstly by Herodotus, as narrator, observing that law is king of all (νόμον πάντων βασιλέα, 3.38.4) secondly, in a speech given to Demaratus, who tells Xerxes that Spartan men are motivated to fight by law as master (δεσπότης νόμος, 7.104.4). Both examples engage with gender; in the first instance, the rules to which communities are attached are practised by both men and women, and prescribe appropriate performances of gender as well as other roles. In the second instance, the Spartan *nomos* is directed at the military male and, as I will show in chapter 5, is reinforced by an ideology of female inferiority which feminises the man who fails to live up to gender expectations, but also by social scrutiny and judgement, involving both genders.

[6] See de Jong 2001: xv for definition of narrator; 2013: 257-267; Baragwanath 2008: 33; 2012: 30.

3. The rule of law

3.1 Law as master

> It was Amasis also who made the rule that every Egyptian declare his means of livelihood to the ruler of his district annually: failure to do so or to prove that one had a legitimate livelihood was punishable with death
>
> νόμον τε Αἰγυπτίοισι τόνδε Ἄμασις ἐστὶ ὁ καταστήσας, ἀποδεικνύναι ἔτεος ἑκάστου τῷ νομάρχῃ πάντα τινὰ Αἰγυπτίων ὅθεν βιοῦται: μὴ δὲ ποιεῦντα ταῦτα μηδὲ ἀποφαίνοντα δικαίην ζόην ἰθύνεσθαι θανάτῳ (2.177.2)

Amasis' *nomos* reflects the coercive aspect of law which is found in the legal command and sovereignty theories of Hobbes, Bentham and Austin, who hold that a legal system is based on duty-imposing rules which create obligations though external pressure; one man is forced to do what another tells him.[7] A lawgiver gives commands which prescribe or proscribe a series of acts or course of conduct, placing obligations on the citizen or subject, and imposing sanctions for disobedience. Harris refers to these theorists in his analysis of the rule of law in ancient Greece, the ideal of which, he argues, was 'one of the most important Greek values', and he sets out four key attributes of law, namely, that it is enforced by political authority, is

[7] Hobbes 2012: 820-1 in *Leviathan* (original publication 1651) writes 'Law is the Commandment of that Man, or Assembly, which has sovereign authority in the commonwealth and who alone has the right to make laws and to punish those who break them' and any other rules not prescribed by the sovereign are counsel or advice not law; Bentham 1970: 18-20 in *Of Laws in General* (original publication 1782) argues that law is from the sovereign to whose power the party in question is subject; Austin 2000: 13-17 in *The Province of Jurisprudence Determined* (original publication 1832) writes that every law or rule is a command, binding/obliging the subject, imposing a duty to obey, with 'liability to evil' (i.e. sanction), for disobedience or violation of duty. Hart 1961: 60 summarises Austin's doctrine as 'habitual obedience to orders backed by threats'. On Bentham and Austin, see Wacks 2005: 42-67 with bibliography.

intended to have widespread or universal application, is prescriptive about conduct and contains a sanction.[8]

Both Harris and Canevaro draw parallels between ancient and modern concepts of the rule of law. Canevaro argues that the rule of law in classical Athens, based on rules which defined the requirements for enacting law, a system of due process, that is a trial system, and the use of oaths and rhetorical commentaries to enforce and clarify the law, conformed to both ancient and modern concepts of the rule of law.[9] Harris also considers that the Athenians had a similar concept of the rule of law to the one we have today (begging the question who 'we' are), namely that the law applies equally to all, all officials are accountable, all regulations are accessible, adjudicative procedures are fair, and there is no punishment without trial. However, he acknowledges that the lack of belief in universal human rights, the fact that captives in war had no rights, and the use of torture are all significant differences between an ancient and modern concept of the rule of law.[10] In drawing parallels between the ancient and the modern concept of the rule of law, both scholars refer to the work of those whose focus is on the modern concept; Canevaro cites the work of Tamanaha, Harris quotes from Bingham's book *The Rule of Law*.

However, there is a significant problem of definition, as Tamanaha acknowledges. He regards the rule of law as 'the preeminent legitimising political ideal in the world today' and 'a major achievement deserving of preservation and praise' but also recognises that the tension between law as a restraint on democracy and law as a product of self-government, was one

[8] Harris 2004:1-8, 26, 48; 2013: 2-10 on rule of law in democratic Athens.
[9] Canevaro 2017: 213-216.
[10] Harris 2013: 2-10. Lanni 2008: 481-486 on lack of protection for non-combatants in war in ancient Greece.

which existed in classical Athens and has continued throughout history.[11] He also recognises the difference between 'thick' and 'thin' definitions of the rule of law. A 'thick' definition in modern terms means a link to liberty and democracy, a commitment to human rights and a constraint of state power, whereas a 'thin' definition makes law the instrument of government and concentrates on the protection of individual rights, such as property, contract, privacy and autonomy, the efficient administration of justice and stable governance. The 'thick' definition can become contested in a legally pluralist world where global capitalism and liberal democratic norms clash with customary or religious norms or local methods of dispute resolution. The 'thin' definition, however, can be used by tyrants or can, for example, legalise slavery, as in 19th century CE America.[12]

Bingham 'roundly rejects' a 'thin' definition, since respect for human rights and good governance are 'inseparably linked; the rule of law requires that the law afford adequate protection of fundamental human rights'.[13] These fundamental human rights are to be found in the Human Rights Act 1998, incorporating the articles of the European Convention on Human Rights, and include the prohibition of torture, slavery and forced labour, and no discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.[14]

If we view the rule of law through the prism of gender, therefore, there is a huge gap between the modern 'thick' definition and the ancient concept. Harris has to concede that, in gender

[11] Tamanaha 2004: 4, 10.
[12] Tamanaha 2004: 91-96; Tamanaha 2011: 1-17 on the rule of law and legal pluralism in development projects.
[13] Bingham 2010: 67, 84.
[14] Bingham 2010: 70-1, 80-1 on Articles 3, 4 and 14 of European Convention on Human Rights 1950.

terms, Athenian women were not agents in court proceedings, having to rely on male relatives to bring law suits on their behalf.[15] Legal and political rights were accorded to Athenian male citizens; there was no concept of fundamental human rights and non-discrimination between different groups, as the basis for the rule of law. As Livingstone points out, the underlying status quo in democratic Athens was gender-based and wealth-based inequality.[16] This point is also well made by Osborne, who argues that the exclusion of women from the law courts was part of an ideology which explicitly discriminated against women to achieve homogeneity within the Athenian male citizen group, making the court an 'arena for competition for a self-selecting elite, not a tribunal before which all have the right to appear'.[17] I do not think it is sustainable, therefore, to import contemporary 'thick' definitions of 'the rule of law' into classical Athens, let alone the wider world of the *Histories*.

Tamanaha, however, concludes that the ideology of the rule of law has a restraining influence on those in power, and the concept of the rule of law should be used as a restraint on government tyranny, prompting evaluative questions on necessary limits on government, the justice of laws, the good of the community.[18] Bingham also regards the rule of law as an important bulwark against tyranny, noting that the European Convention on Human Rights was a response to the tyranny of Nazi Germany and Communist USSR.[19] The arbitrary use of power, and the lack of restraint on the exercise of that power, as Bingham points out, leads to 'the midnight knock on the door, the sudden disappearance, the show trial, the subjection of prisoners to genetic experiments, the confession extracted by torture, the gulag and the

[15] Harris 2013: 6-7. See also Schaps 1979: 4-5, 17; Just 1989: 26-30; Todd 1993: 201.
[16] Livingstone 2016: 62n.13.
[17] Osborne 2010: 415-6. Stehle 1997: 117 - democratic ideology rejected women as representatives of the community,
[18] Tamanaha 2004: 137-141.
[19] Bingham 2010: 67. Harris 2004: 83-4 also makes this point.

concentration camp, the gas chamber, the practice of genocide or ethnic cleansing, the waging of aggressive war'.[20]

A key question for Herodotus was the extent to which tyranny was compatible with the rule of law. Is the tyrant subject to any rules at all, or is all authority concentrated in him as monarch, with power to govern arbitrarily and without constraint? This is the accusation made by Otanes in the Constitutional debate, that a monarch subverts a country's ancient rules, rapes women and kills men without trial (νόμαιά τε κινέει πάτρια καὶ βιᾶται γυναῖκας κτείνει τε ἀκρίτους, 3.80.5). I will argue that Herodotus uses gender relations to think about power and excess, and to interrogate the extent to which the king is bound by reciprocal obligations. If all his subjects are slaves, what protection do they have? Is he the only source of legitimacy? Cambyses, for example, does consult an authority other than himself, the royal judges, but they, out of fear, tell him that he can 'do what he wants', thereby authorising him to act without constraint, as he does when he assaults his wife/sister, killing her and their unborn child (3.32). Sometimes, therefore, Herodotus highlights the importance of the rule of law by its absence, through the arbitrary and unchecked abuse of power by tyrants, often involving gender transgressions.

One of the questions I will ask in this study, therefore, is what the rule of law meant to Herodotus, and I will argue that, as with modern definitions, it has both a 'thick' and a 'thin' aspect. The 'thick' concept of the rule of law in the *Histories* is linked, I argue, to recognising human limits and boundaries (to avoid divine sanction or punishment by the gods), and for this reason there are two aspects of Canevaro's argument which I find helpful in thinking

[20] Bingham 2010: 9.

about the concept. Firstly, he opposes *eunomia* to *hubris*: *eunomia* is linked to order, rules of behaviour, proper dealings with others, including the gods, respect of one's own and others' rights and prerogatives, and knowing one's place, whereas *hubris* means overstepping the mark, improper, disrespectful or dishonourable dealings with others, including the gods.[21] This is a much wider concept of the rule of law than one based on political institutions. It reflects the unwritten rules of family, community, and the gods, who are believed to intervene when power is exercised by those who think the rules do not apply to them and forget human limitations.

Secondly, Canevaro argues that the rule of law was a normative ideal in the ancient Greek *polis* and that even tyrants had to show a law-abiding aspect, even if this was rhetoric rather than reality.[22] It is an ideal which, I argue, Herodotus is committed to, and which he uses to assess, and distinguish between, those who exercise power, whether Greek or non-Greek. Whereas Cambyses uses legal precedent to 'do what he wants', Darius commits to a form of due process when dealing with Intaphrenes' revolt, in that he interrogates all the co-conspirators before imprisoning Intaphrenes and his male family (3.118).

3.2 Hart's model of law

The Austinian model of law, as an order backed up by threats, has been criticised by another legal theorist, Hart, who argues that it does not reflect the variety of laws in society, or the infrastructure required to produce a fully functioning legal system. In addition, it does not acknowledge the 'internal' aspect of rules or the duties those rules impose on a sovereign as

[21] Canevaro 2017: 220 n.32. I use this wider definition of *hubris* in this study, rather than as a legal offence in classical Athens, as examined by Fisher 1990: 123-138.
[22] Canevaro 2017: 222-231.

well as a subject.[23] Hart recognises that the model of law as orders backed up by threats is to be found in criminal law, which creates rules which we have a duty to obey, and are punished for violating. The sanctions attached to breaches of the criminal law also have a social function in that they are intended to act as a form of deterrence.[24] However, Hart argues that there is a category of law not based on orders backed up by threats. Some laws are power-conferring, as well as duty-imposing, that is, they give rights as well as impose obligations, enabling those in the community to, for example, enter into contracts, negotiate marriages, make wills. In the *Histories*, a number of *nomoi* have a power-conferring as well as a coercive aspect; for example, a political agreement between 12 Egyptian kings is secured through marriage alliances, making *nomos* here a form of dispute resolution:

> [They made] it a rule of their kingship that none of them should try to depose any of the others or attempt to gain more territory than any of the others, but that they should be firm friends and allies.
>
> οὗτοι ἐπιγαμίας ποιησάμενοι ἐβασίλευον νόμοισι τοῖσιδε χρεώμενοι, μήτε καταιρέειν ἀλλήλους μήτε πλέον τι δίζησθαι ἔχειν τὸν ἕτερον τοῦ ἑτέρου, εἶναί τε φίλους τὰ μάλιστα. (2.147.3)

Secondly, Hart argues that any legal order has to have secondary rules, which provide certainty, flexibility and an efficient method of adjudication.[25] The first of these secondary rules is the rule of recognition, 'the foundational rule in a legal system which identifies the sources of law in that system and imposes a duty to give effect to laws emanating from those

[23] Hart 1961: 26-28.
[24] Hart 1961: 27.
[25] Hart 1961: 79-96 on law as union of primary and secondary rules; MacCormick 2008: 134-5.

sources'.[26] The rule of recognition has a wider application than modern liberal democracies, as commentators have noted; it can be practised by a population accepting the succession of a king.[27] It creates a 'system of reciprocal, legitimate expectations', providing a rule which guides conduct and is the basis for criticising those who fail to comply.[28] Hart's next secondary rule empowers individuals and groups to change the rules, and his third secondary rule, of adjudication, gives individuals and groups the authority to decide disputes. These rules in combination, therefore, allow for identification, modification, and adjudication of the law, within an institutional framework.[29] In chapter 1, I will explore the origin of *nomos*, the role of the lawgivers Solon, Lycurgus and Deioces in creating institutions, and, in chapter 2, I will consider the extent to which the exclusion of women from those institutions is significant to Herodotus' analysis of the rule of law.

Hart's third criticism of Bentham and Austin is that they fail to recognise the force of those 'internal' rules which threaten those who deviate from the norms of the group. Members of a community are expected to internalise these rules, which are associated with 'normative' language such as 'ought' and 'must'; 'violation of a rule is not merely a basis for the prediction that a hostile reaction will follow but a *reason* for hostility'.[30] Law imposes obligations on members of the community based on societal control, making nonconformity or deviance unacceptable. Rules have a social as well as a legal dimension, which require consideration of how those rules are perceived by community members and how normative behaviours are enforced.

[26] Lord Reed in Miller [2017] UKSC 5: 223 (dissenting) in majority decision by Supreme Court that Act of Parliament is required to authorise ministers to give notice of the decision of the UK to withdraw from the European Union.
[27] Shapiro 2001: 152-154.
[28] Coleman 2001:116-120.
[29] MacCormick 2008: 134-6.
[30] Hart 1961: 55-56, 86- 88. Hart's italics (*reason*, p.88)

Scholars of ancient law have identified this 'internal' aspect of law. Ostwald argues that the meaning of *nomos* goes further than Heinemann's definition of 'a rule which is valid for a particular group of people'.[31] It has to be acknowledged and accepted, signifying 'an order which is or ought to be generally regarded as valid and binding by members of the group in which it prevails'.[32] An aspect of *nomos*, therefore, is belief, opinion, point of view and intellectual attitude.[33] *Nomos* combines practice and ideology, defined by Missiou as 'a relatively coherent system of beliefs and values, traditions and purposes, connecting the institutional networks of a given society with its emotional affinities'.[34] In the *Histories*, we identify many cases where the sense of obligation is based on internal conviction not external pressure; the word *nomos* conveys belief and attachment. Herodotus' position on the 'internal' aspect of *nomos* is set out in Book 3:

> If one were to command all peoples to choose the best rules in the world, each group would, after due consideration, choose its own; each group regards its own rules as being by far the best.
>
> εἰ γάρ τις προθείη πᾶσι ἀνθρώποισι ἐκλέξασθαι κελεύων νόμους τοὺς καλλίστους ἐκ τῶν πάντων νόμων, διασκεψάμενοι ἂν ἑλοίατο ἕκαστοι τοὺς ἑωυτῶν: οὕτω νομίζουσι πολλόν τι καλλίστους τοὺς ἑωυτῶν νόμους ἕκαστοι εἶναι. (3.38.1)[35]

[31] Heinemann 1945: 65 'das bei einer Gruppe von Lebewesen ,,Geltende"
[32] Ostwald 1969: 54; 1986: 85-88; Hall 1997: 30 on social identity as the internalising by individuals of 'shared group norms and values'; Humphries 1987: 217 defines *nomos* as 'accepted and established rules of conduct handed down from the past'; Blok 2002: 227 on *nomos* as a sovereign force in people's behaviour; Cartledge, Millett and Todd 1990: 11-12 on law, society and politics meeting in the idea of *nomos*; Hunter 1994: 5, 116 on social control as an aspect of *nomos*.
[33] Ostwald 1986: 37; Demont 2013: 42.
[34] Missiou 1998: 181n.1.
[35] For the most part, I translate *nomos* as 'rule' in this thesis, because the English word conveys both law and custom, coercion and regulation.

The rule of law in this instance is an 'internal' rule which makes *nomos* king of all. [36] People are attached to their own rules, however strange or abhorrent they may seem to others, and people assert the superiority of their laws over those of other peoples. The Scythians, for example, reject others' *nomoi*, punishing those who try to introduce them (4.76.1). The power of law is based on social control and communal pressure; these are the rules of the group, which must be internalised, they confer a sense of belonging, of collective identity. Munson is right, therefore to identify both the external and internalised aspect of *nomos*: 'the cause of the 'must' is the force of *nomos* ... the only important category of internal psychological motives that Herodotus denotes with ἀνάγκη words'.[37]

What does 'living with the rules' mean in this context? In his work, Herodotus emphasises the diversity and variety of laws, and he shows that there are social, cultural and religious rules which are part of everyday life, and are enforced by communal pressure. In contrast to the battlefield, the law courts or the assembly, women are part of this community, which is bound together by ties of family, religion and shared rules.[38] This 'internal' attachment to one's own rules is an important aspect of the intersection between *nomos* and gender, because there is sometimes a disjuncture between what characters believe about female capacity and how women in practice perform gender roles and enforce the rules.

[36] Marincola 2006: 19; Asheri 2007: 44; Baragwanath 2015: 23; Thomas 2000: 125-6; Munson 2001b: 67-72; Rood 2006: 298-300; Demont 2013: 37-45.
[37] Munson 2001a: 43-44.
[38] Just 1989: 23. Brock and Hodkinson 2000: 11. Osborne 2011:102-3; Blok 2013: 163-4; Zacharia 2008: 54; Zweig 1993: 167; Parker 2011: 240-243.

However, it is important to acknowledge that this acceptance of rules is not absolute or unquestioned. Marmor criticises Hart's theory of rules, whereby most people regularly act in accordance with the rule and manifest a normative attitude towards it, criticising deviant behaviour and exerting social pressure to enforce conformity, arguing that this does not explain why people follow the rule, nor how the rule arises. He argues that social conventions arise out of contest, where agreement cannot be reached. He contrasts the basic cooperative objective of ordinary conversations with the non-cooperative form of communication in a legal context, when people display strategic behaviours. Legal praxis, therefore, is like a game, which requires skill and tactics and is inherently competitive.[39] He draws a distinction, therefore, between rules and strategy.[40] I will develop this argument in this thesis, arguing that 'playing by the rules' sometimes involves negotiating with power or authority; some do it better than others.

Finally, Hart points out that even a penal statute may include duties on those who make the law as well as on others. I will explore this in greater detail when I consider how Herodotus shows the consequences for tyrants who do not 'live with the rules', which include the rules of the *oikos*. For now, I highlight one example of compulsion on Xerxes, when he is forced to accede to Amestris' request:

> the rule compelled him (for at this royal banquet in Persia every request must of necessity be granted)
>
> ὑπὸ τοῦ νόμου ἐξεργόμενος, ὅτι ἀτυχῆσαι τὸν χρηίζοντα οὔ σφι δυνατόν ἐστι βασιληίου δείπνου προκειμένου (9.111.1)

[39] Marmor 2001: 195-201; 2008: 437-439.
[40] MacCormick 2008: 59.

To summarise, Hart's model of law is one in which primary rules of obligation (to perform certain actions and desist from others) include those customary laws based on social control, and also require secondary rules which provide an authoritative version, allow for change and determine how a dispute is to be adjudicated and by whom.[41] This model provides a useful tool for analysing *nomoi* in Herodotus because it reflects not only the external coercive aspect of law but also its function as an agent of social cohesion and control, having a role in constructing, but also at times contesting, social expectations, ideologies and institutional inequality. Moreover, it recognises the diversity of *nomoi* in the *Histories* and highlights reciprocity and legitimate expectations, as well as command and control.[42]

Hart's model, however, has its limitations for analysing the concept of the rule of law in the *Histories* because he had in mind institutional structures (a law-making body, an administration whose officials accept the rule of law, and a judiciary which is authorised to decide disputes) whose workings could be analysed. In the case of Miller, the Supreme Court had to make a decision on the rule of recognition: did authority rest with the executive or parliament to make the decision to trigger Article 50 to leave the European Union?[43] However, the institutional significance of both institutions was not in question. Similarly, Bingham's definition of the rule of law, that 'all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly

[41] Hart 1961: 89-95.

[42] For this reason, I prefer Todd's broader definition of *nomos* as 'perhaps best studied not as a source of juridical principles but rather as a way of understanding how particular ancient societies perceived and regulated themselves' to MacDowell's; 'law approved or imposed by a community/ruler with sanctions for infringements', both in Hornblower and Spawforth (eds.) *Oxford Classical Dictionary* 2012: 811; 802.

[43] Miller [2017] UKSC 5.

made, taking effect generally in the future and publicly administered in the courts' requires an institutional structure.[44]

In classical Athens, likewise, we read the Athenian orators within the framework of the institutions of the assembly, Council and law courts, and Harris is right, I think, to analyse Athenian law within this institutional framework. He uses the work of March and Olsen on the role of institutions in politics to argue that rules and procedures shape conduct; in other words, they are not merely the arena within which politics takes place.[45] In some ways, March and Olsen's work mirrors that of Hart in that they recognise that rules can be both external coercion and part of a code of appropriate behaviour which is internalised through socialisation and education. Moreover, they argue that courts are not only areas for contending social forces but also structures which define and defend norms and beliefs, and places which impose standards and procedures.[46] However, I will argue that this 'institutional' approach is not appropriate for a study of the *Histories*. One aspect of my argument, which I develop in chapter 2, is that Herodotus' methodology is not based on the institutions of the law courts, or on written statute or forensic oratory, but still deals with key legal methods of evidence-gathering, interpretation and judgment through speech.

4. Law as a tool: the model of the legal realists

For this reason, I now consider an alternative model, that of legal realism, which considers the practice of law in societies, such as that of the Cheyenne Indians, which did not have written

[44] Bingham 2010: 8.
[45] Harris 2013: 8.
[46] March and Olsen 1989: 16-19.

laws, but clearly had means of resolving disputes and regulating their community.[47] This has been the starting point for those scholars of the law of classical Greece (mainly Athens and, to a lesser extent Sparta and Gortyn) who adopt a comparative methodology, using cross-cultural material from anthropology, to include contemporary Mediterranean communities and the 'trouble-cases' of legal anthropology, drawing on the work of legal realists, Llewellyn, Hoebel and Pospíčil. Their functionalist approach emphasises the practice rather than the theory of law, and uses an interdisciplinary approach, interrogating the work of sociologists, anthropologists and psychologists, to consider law in the context of social practice; what do people do with law?[48] As Llewellyn puts it in *The Bramble Bush*, a lecture to law students: 'This doing of something about disputes, this doing of it reasonably, is the business of law'.[49] Law should be seen 'merely as a batch of tools to get jobs done in a culture', in the context of diverse and sometimes conflicting levels of control-systems (what he calls "law stuff") in any complex society.[50] Hoebel also argues that the functions of laws are to maintain social integration through norms, to authorise physical coercion as a way to maintain order, to dispose of 'trouble cases', and to adapt to social change when necessary.[51]

Those scholars, therefore, who adopt the approach of the legal realists, and whose focus is democratic Athens, ask 'how law functions and is practised in a *polis*'.[52] They argue that the rule of law intersected with the interests of the *demos*, rather than being in opposition to it,

[47] Llewellyn and Hoebel 1941 *The Cheyenne Way*.
[48] Leiter 2001: 369-370.
[49] Llewellyn 2008 (original lecture 1930): 5. Hoebel 1954: 15 on the process of law as an aspect of the total system of social control maintained by a society, 124 on legal decisions not codes as essential feature of law; Llewellyn and Hoebel 1941: 341-346 on 'trouble cases' including murder, violation of hunting rules, banishment of female for aborting a foetus and punishing those who spoke false oaths.
[50] Llewellyn and Hoebel 1941: 42, 52.
[51] Hoebel 1954: 275.
[52] Cohen 2005: 5 (quotation); Hunter 1994: 7; Just 1989: 8, 82; Todd and Millett 1990: 14-18; Todd 1993: 24-26.

and they relate litigation to 'cultural values of competition, aggression and wiliness'.[53] They also argue that the motivation for legal suits was often the desire for revenge, the need to protect reputation, or a means to perpetuate rather than resolve disputes.[54] Scholars who adopt this approach, therefore, emphasise 'law in action', and focus upon legal processes rather than formal legal structures, seeking to contextualise law rather than analyse its internal logic, and seeing law as more dispute resolution than an objective search for justice.[55] Foxhall argues that the courts emphasised techniques of persuasion, not legal technicalities, and there was no sense of the autonomy of law; for her, law, for Athenians, was a tool not a master.[56] Christ, however, argues that whilst the development of legal rhetoric was far more prevalent in classical Athens than an emerging jurisprudence, those who litigated had to appeal to the jurors' sense of fairness, as well as protect their own prestige and reputation.[57]

This debate concerns democratic Athens and so, for the most part, is beyond the scope of this thesis, but I will address the issue of 'law in action' which the debate provokes. I argue that the model of Pospíčil, one of the legal realists, is the most helpful in analysing the rule of law in the *Histories*, because it recognises the role of law in everyday life as well as its institutional place in law courts, law codes and a judiciary and legal profession, but also acknowledges the coercive aspect of law, whether formally or informally instituted, which is sometimes missing from the analysis of those scholars who take a 'legal realist' approach to Athenian law. Pospíčil's aim was to formulate an analytical concept of law that could be applied cross-culturally. His definition of law does not refer, therefore, to a sovereign or king

[53] Christ 1998; 4.
[54] Cohen 2005: 11 (quotation); Christ 1998: 4, 22-23; Todd 1993: 67-68.
[55] Todd and Millett 1990: 14; Osborne 2011: 193, 200-204. Cohen 1990: 160-161 argues that sometimes the aim of litigants was to manipulate rather than resolve conflicts.
[56] Foxhall 1996: 6-7.
[57] Christ 1998: 34-36, 223-224 - litigation was related to reputation, the desire to protect *timē* and pursue *timōria*.

but to the legal authority within a group, that is, those who have power to enforce an imperative decision (you must behave in this way), by way of a sanction (which can be physical or psychological), in a dispute between parties on rights and obligations, and who intend their decision to be applied universally (to all similar problems in the future).[58]

This analysis has some parallels with Harris' examination of the Greek ideal of the rule of law. However, Pospíčil questions the idea that law is the property of society as a whole rather than subgroups within it, seeing this idea as 'a characteristic of a modern Western Weltanschauung which thinks in terms of dichotomies' and uses evolutionary explanations; if 'civilised' people are rational, then 'primitive' people are irrational.[59] He suggests this may be a legacy of the 'well-elaborated and unified law of the Roman Empire ... had classical Greece exercised such influence over the minds of our civilisation, our traditional concept of law might have been much more flexible and, cross-culturally speaking, 'realistic'.[60] He argues that there is a plurality of legal systems within any society, with each functioning subgroup regulating its members by varying forms of social control, with the result that the individual may be subject to several legal systems. Though he distinguishes between authoritarian law, regarded as unjust by most people, and requiring external sanctions and enforcement, and internalised custom, which is followed by most of the group, he also points out that what wider society may regard as custom, members of a subgroup may see as authoritarian.[61] He

[58] Pospíčil 1971: 40-44, 81-87 On *obligatio* as social relationship between parties to the dispute; 87-95 on legal sanction as either withdrawal of reward/favour or physical/psychological punishment (shaming, for example). He takes a functional approach to sanction: the effect of the sanction is more important than the form.
[59] Pospíčil 1971: 341.
[60] Pospíčil 1971: 99.
[61] Pospíčil 1971: 344-5.

concludes, therefore, that 'law should be studied as an integral part of the cultural whole, not regarded as an autonomous institution'.[62]

5. Legal pluralism

I argue that this is a more productive way to approach the rule of law in the *Histories*, as an intersection of law with the cultural whole, rather than considered in an institutional context. As Tamanaha notes, formal legality has its uses but may have limited applicability to family and other communal activities.[63] In the *Histories*, I will show that the rule of law applies to everyday activities, in which women are involved as actors who police the boundary between the public and the private sphere, and enforce social and cultural norms, as well as being a subaltern group, excluded from legal and political institutions. This approach, therefore, applied to the *Histories*, portrays cultural conflict or collaboration as a process of negotiation between subgroups or cultures.[64]

The term legal pluralism reflects 'the co-existence de jure or de facto of different normative legal orders within the same geographical and temporal space'.[65] In the *Histories,* one of these normative legal orders is the regulation and enforcement of gender norms, which is often done by women. Candaules' wife, for example, issues her husband's personal guard Gyges with an ultimatum (be killed or kill the king), since the king has acted unlawfully (*anomos*) in arranging for her sexual exposure before Gyges (1.8-1.12). She can issue a command to Gyges because she has authority as queen, a fact her husband has disregarded. Though he has

[62] Pospíčil 1971: 95.
[63] Tamanaha 2004: 137-141.
[64] Dougherty and Kurke 2003: 2-13.
[65] Quane 2013: 676, 680 - 'the term clearly refers to the existence of more than one legal or 'law like' normative system'. For link with rule of law see alsoTamanaha 2011:1-17.

the power of a tyrant, his wife is the one to pass judgment, and he is punished for disregarding legitimate gender expectations within the *oikos*. This makes her one of many women in the *Histories* who protest against the violation of *nomos* by men.

The rules which dictate appropriate gender performance apply to men as well as women, and are reinforced by social judgments. For example, when Croesus excludes his son Atys from an expedition to kill a boar, following a dream in which his son is killed by an iron spearhead, Herodotus expresses the weight of social expectation in the words he gives to Atys:

> What kind of man will my fellow citizens take me to be? What will my new wife think of me? What kind of husband will she think she is living with?
>
> κοῖος μέν τις τοῖσι πολιήτῃσι δόξω εἶναι, κοῖος δέ τις τῇ νεογάμῳ γυναικί; κοίῳ δὲ ἐκείνη δόξει ἀνδρὶ συνοικέειν; (1.37.3)

Atys has to perform appropriately as a man to preserve the respect of the community and his wife.

These examples show that the rule of law cannot be based solely on external coercion. As Hart argues, such an approach fails to recognise the force of those rules which threaten those who deviate from the norms of the group. Law imposes obligations on members of the community based on societal control. Rules have a social as well as a legal dimension, which require consideration of how those rules are perceived by community members, and how normative behaviours are enforced. For example:

> The Argives made a rule, with a curse added to it, that no Argive grow his hair, and no Argive woman wear gold, until they recovered Thyreae
>
> ἐποιήσαντο νόμον τε καὶ κατάρην μὴ πρότερον θρέψειν κόμην Ἀργείων μηδένα, μηδὲ τὰς γυναῖκάς σφι χρυσοφορήσειν, πρὶν Θυρέας ἀνασώσωνται (1.82.7)

This is an order, with a penal sanction in the form of a curse. However, the rule is also both functional, in that it provides a means to display the Argives' response to defeat and their resolve to recover Thyreae, thereby acting as an agent of social cohesion, and ideological, in that it reinforces gender performance through the regulation of outward appearance. These examples also show that the regulation of sexual behaviour and gender performance, as well as Amasis' coercive dictat, is the business of *nomos*, as feminist legal theorists have argued, in relation to modern law.

6. Feminist legal theory

> The Cyclopes have neither assemblies for advising, nor customary laws ... except that each one lays down the law to his wife and children
>
> οὔτ᾽ ἀγοραὶ βουληφόροι οὔτε θέμιστες ... θεμιστεύει δὲ ἕκαστος παίδων ἠδ᾽ ἀλόχων (Homer, *Od*. 9.112 ... 114-5)

Though the Cyclops have no assemblies, laws, community life, agriculture, technology and, as Odysseus and his men discover, no tradition of hospitality,[66] they do have patriarchy.[67] The

[66] De Jong 2001: 231-2.
[67] I use the definition adopted by Goff 2004: 11 of patriarchy as 'a society based on male dominance of all areas of valued activity'.

regulation of the family is a rule, even in the absence of other rules. Both the Hartian model of legal positivism and the legal realist school fail to engage in a significant way with gender. Hart's model of primary rules of obligation, for example, ignores completely the regulation of family life: parental obligations, the reciprocal obligations of the young to care for the old, sexual conduct and the regulation of sexual activity.[68] Llewellyn was aware of the risk of unconscious ethnic or chronological bias in judges, warning his students to guard against 'the smugness of your own tribe and your own time: we are the Greeks, all others are barbarian.'[69] However, like Hart, he was blind to the significance of gender in law, though his study of the Cheyenne Indians included a number of women, both as victims of male sexual violence and as authority figures. Pospíčil's model of authority figures is exclusively male. Though he acknowledges that in China, for example, the family can be the centre of power and that this can cause a clash between familial and state law, he does not interrogate this further, nor does he expand on who the 'pertinent family authorities' are in solving six family disputes amongst the 'Eskimo' he researches.[70]

I will, therefore, use two further types of cross-cultural material in this study, one legal, one sociological, to analyse the rule of law and gender in the *Histories.* Firstly, I argue that modern family law and critiques of it, which highlight the ideological, as well as the functional and positivist aspects of such law, provide a comparator to consider how such aspects might intersect in the context of the *Histories*. Secondly, I use a model from modern sociology to consider 'the cultural narrative in people's accounts of law', what 'the rule of law' meant, both to Herodotus, and to individuals and groups in the *Histories*.[71]

[68] MacCormick 2008: 124-6.
[69] Llewellyn 2008 (original lecture 1930): 40-41.
[70] Pospíčil 1971: 56-7, 64, 76-8 (Eskimo), 113-7 (China).
[71] Sibley and Ewick 2000: 53.

Feminist legal theory posits that the family, like other institutions, is a social construct, which regulates its members, and should be studied as an element of the practice of structural gender inequality. Law is 'not simply a coercive force, but also a powerful and productive social discourse which *creates* and reinforces gender norms' and can contribute to a gender ideology based on the binary opposition of femininity and masculinity, which devalues the 'feminine'.[72] Lawyers, it is argued, often fail to interrogate the ideological framework they work within, and ignore important social and cultural rules.[73]

Naffine, therefore, notes how law both polices the boundary between the public and the private realm, and defines appropriate gender roles, male and female. She argues against the exclusion of the family from liberal political theory, pointing out that the family 'is itself organised and understood only in accordance with social and legal norms'.[74] Fineman also argues that the family is not 'an essentialised institution, natural in form and function' but highly regulated.[75] Other scholars also point to the ideological role of family law in defining who is excluded as well as who is included and to 'the manipulation of social norms as well as legal ones' in the regulation of family life. [76] In this study, therefore, I will examine how men and women 'live with' the rules of family and the *oikos* in the *Histories*. I will also consider the significance of family relationships in the *Histories*, asking whether *oikos* membership is contested, what social and cultural expectations there are in respect of gender,

[72] Hunter, McGlynn and Rackley 2010: 6-7.
[73] Davies and Munro 2013: 1-13; Wacks 2005: 309-321; Naffine 2002: 71-101 for review of scholarship in feminist legal theory (FLT) generally; Diduck and O'Donovan 2006: 1-17 applying FLT to family law. MacCormick 2008: 10-11.
[74] Naffine 2002: 83-85.
[75] Fineman 2004: 154.
[76] Masson, Bailey-Harris and Probert 2008: 6-7; Diduck and O'Donovan 2006: 7; Example of exclusion: Burden and Burden v. UK [2007] 1 FCR 69; two sisters claimed their exclusion from inheritance tax exemptions available to married couples or in civil partnerships was discriminatory (claim rejected).

how disputes are resolved, and whether there is a clear boundary between public and private ideologically, or in practice.[77]

This final point introduces another key theme in my thesis: the relationship of women to power, the role of *nomos* in that relationship, and the relevance of a 'feminist' approach to studying the *Histories*. For the purposes of this thesis, I follow the approach adopted by Lady Hale, president of the Supreme Court, who understands feminism in these terms:

> Feminism involves the belief both that women are the equals of men and that the experiences of women are as much part of the common experience of mankind as are the experiences of men. The first belief is normative. It shapes our view of what the law should be. The second belief is empirical. It shapes our view of reality.[78]

She reflects the liberal strand of feminist legal theory, which seeks to place women as equal before the law, and as actors in law, whether as litigants, lawyers or judges.

This normative belief in female equality separates us from Herodotus' *Histories* in which gender inequality is a part of the institutional framework of most societies. Those societies that practise gender equality are on the margins of the known world. The Issedonians are one example: 'In other respects, these are said to be a law-abiding people, too, and the women to have equal power with the men' (ἄλλως δὲ δίκαιοι καὶ οὗτοι λέγονται εἶναι, ἰσοκρατέες δὲ ὁμοίως αἱ γυναῖκες τοῖσι ἀνδράσι, 4.26.2). The Amazons (4.110-117) are another. They do not fit the model of the Amazons in Athenian ideology, that sees the female fighters as

[77] Rollinger and Bichler 2000: 99-105 on women in the *Histories* being defined primarily in terms of their relationship to men, as daughters, wives and mothers.
[78] Hale: v in Foreword to Hunter, McGlynn and Rackley 2010.

aggressors and invaders who must be defeated. Instead, their story is a reflection on their way of life, their *nomoi*, and their relationship with men, which is based on reciprocity and not hostility. I explore the story of the Amazons in chapter 3 as a thought experiment on difference. However, these groups are remarkable (*thōmata*) because they practice gender equality, as are the individual high-status women in the *Histories*, like Tomyris, Pheretime and Artemisia, who do exercise political and military power.

Moreover, a belief in gender equality is not expressed at all in the *Histories*. Indeed, Artemisia, though she exercises power effectively herself, pronounces on the inferiority of women in her speech to Xerxes before the battle of Salamis (8.68.1). In a military context, the ideology of female inferiority based on a binary opposition of male and female genders, whereby one's identity as a male is created through rejecting the female, or projecting femininity onto those whose performance of masculinity falls short of the normative ideal, is used to motivate men to fight. I will argue, however, that a belief in this rhetoric is often shown by Herodotus to be a poor guide to strategy and a misleading predictor of outcomes.

However, Hale's second, empirical, belief is reflected in the *Histories* in that female as well as male experience is described and analysed, albeit by a male narrator.[79] If we focus on women's lack of political and constitutional agency, we privilege political exclusion over social significance. This does not mean that women's social and cultural agency is necessarily greater. In fact, the pressure of social expectation in terms of gender roles, for example, may be more oppressive than subjection to external authority which they share with men. The book *Is multiculturalism bad for women?: Susan Moller Okin with respondents*, illustrates the

[79] Pelling 2000: 190 reminds us that any analysis of 5th BCE texts is based on male constructions of gender. Any extrapolation to the 'real lives' of women has to be speculative.

range of views on the extent to which culture coerces or enables in the modern world.[80] Okin herself argues that there is inevitably a tension between the norm of gender equality and the protection of cultural diversity, and that respect for some cultural practices violates women's and children's rights to protection from violence, citing as one example, the cultural defence of *zij poj niam* (marriage by capture) by Hmong men to charges of kidnap and rape.[81] Her conclusion is that 'unless women – and more specifically young women (since older women often are co-opted into reinforcing gender inequality) are fully represented in negotiations regarding group rights, their interests may be harmed rather than promoted by the granting of group rights'. She points out that an older woman often acquires a relatively high status within the group precisely because she has successfully encultured children and grandchildren into their prescribed gender roles.[82] Halley also argues that culture constrains rather than liberates; the family is illiberal not only because of male control over women, but also because of adults' over children in that parents will always constrain their children merely by enculturing them.[83]

Parekh, however, argues that Okin is too essentialist in talking about 'women' pointing to the diversity of roles, status and power amongst women, whose views on their situation also have to be given due consideration.[84] Honig too questions Okin's proposed partnership between liberalism and feminism, and says the answer is not to extinguish culture, which she defines as 'a way of life, a rich and timeworn grammar of human activity, a set of diverse and often

[80] Cohen, Howard and Nussbaum 1999.
[81] Okin 1999: 18-20.
[82] Okin 1999: 24(quotation), 126.
[83] Halley 1999: 103-4.
[84] Parekh 1999: 69-75.

conflicting narratives whereby communal (mis)understandings, roles and responsibilities are negotiated' or to posit that all men are more powerful than all women.[85]

This book *Is multiculturalism bad for women?: Susan Moller Okin with respondents* has legal significance in that it is referred to by Lady Hale in a modern case in which judges had to reflect on how women and girls themselves view their dress. They also had to place this within a wider debate about human rights, religious dress as a mark of identity, and the tension between gender equality and cultural diversity, between state law and a law-like normative system. In this case, five law lords gave judgment on whether a school (Denbigh High School) unjustifiably limited Shabina Begum's right to manifest her religion or beliefs, and violated her right not to be denied education, by refusing to allow her to attend school wearing a jilbab.[86] The school's uniform policy, intended to promote cohesion and a sense of community at school, gave pupils the option to wear the shalwar kameeze. Shabina Begum contended that her religion imposed an absolute obligation on her to wear the jilbab. The law lords therefore had to decide, firstly, whether the school did interfere with Shabina Begum's Article 9 right to manifest her religion, and secondly, even if it did, whether that interference was objectively justified. On the first count, the court was split three-two on whether there was interference with her Article 9 rights.[87] On the second count, all five judges decided that the school was justified in refusing to allow her to attend school wearing the jilbab. This case

[85] Honig 1999: 39.
[86] R (on the application of Begum (by her litigation friend, Rahman)) (Respondent) v. Headteacher and Governors of Denbigh High School (Appellants). HL [2006] UKHL 15. Shabina's legal representatives argued that the school's decision to exclude [her] breached her human rights under UK and European human rights law, citing Articles 9, 8 and 14 and Article 2 of Protocol 1 of the Convention on Human Rights.
[87] The two dissenting judges were Lord Nicholls and Lady Hale. Lord Bingham, Lord Scott and Lord Hoffmann all held there was no interference.

was decided on the basis of legal interpretations of both UK and European human rights legislation.

However, when we examine the judgments more closely, especially the judgment of Lady Hale, it is clear that wider social, political and cultural issues are engaged by this case. Lady Hale refers to a number of social and constitutional commentators in her judgment, including the contributors to the book *Is multiculturalism bad for women?: Susan Moller Okin with respondents,* and concludes her judgment as follows:

> [98] Social cohesion is promoted by the uniform elements of shirt, tie and jumper, and the requirement that all outer garments be in the school colour. But cultural and religious diversity is respected by allowing girls to wear either a skirt, trousers, or the shalwar kameez, and by allowing those who wished to do so to wear the hijab. This was indeed a thoughtful and proportionate response to reconciling the complexities of the situation.

This judgment recognises the tension between social cohesion and cultural and religious diversity, and also indicates clearly that female dress can be a contested area of law. This is significant for my reading of the *Histories* in that forms of female dress, or states of undress, are key aspects of stories which also engage with *erōs*, power, death and gender identity.[88]

The debate between these scholars to whom Lady Hale referred in her judgment, shows the need, I argue, for an intersectional approach to gender and reflects a retreat from a grand

[88] Candaules story (1.8-12); Periander and Corinthian women (5.92); Minyan women (4.146); Persians and Macedonians (5.18-20); Athenian and Aeginetan women (5.82-89); Xerxes story (9.108-113); Soares 2014: 222-234 and Lee 2012: 179-190 on significance of female dress/undress in Herodotus.

theory of feminism, which was expressed by MacKinnon, for example, in binary terms; 'the state is male in the feminist sense. The law sees and treats women the way men see and treat women'.[89] She argues that the law itself is gendered, benchmarking and assessing women against a normative ideal, whereby both men and the law are seen as authoritative, rational, competent and unemotional. Rather than being a neutral arbiter, law, therefore, is cast as an agent of oppression and denies legal subjectivity to women.[90] This, however, is as reductive as the ideology it critiques. An intersectional approach is preferable, which considers feminist thought as a network of ideas and concepts, rather than set binaries, for example, materialist v. discursive; liberal v. radical; agent v. victim; positivist v. deconstructionalist .[91] Conaghan, for example, argues that we should think of agency as what can be done under (oppressive) circumstances, and stresses the need for a debate between law in action which addresses material realities and law as discourse, rather than polarised opposition.[92] This is the approach I will take in considering the intersection of gender with the rule of law in the *Histories.*

7. The model of intersectionality

This model provides a means to critique the essentialist views of some feminists for whom 'woman' was the sole marker of identity; Kimberley Crenshaw, for example, points out that both race-based and gender-based research ignores the experience of women of colour and thereby marginalises them.[93] Her construction of a social model in which there are multiple intersections of identity is reflected also in McCall's definition of intersectionality as 'the relationships among multiple dimensions and modalities of social relations and subject

[89] MacKinnon 1983: 644, 658.
[90] Rackley 2010: 8.
[91] Hirschmann 2013: 59. For critiques of 'grand theory' of feminism, see Davies and Munro 2013: 2; Alibhai-Brown 2000: 207; Malik 2006: 222; cf. Naffine 2002: 90-93 for dangers of theoretical paralysis and excessive autobiography/solipsism from complete rejection of essentialism.
[92] Conaghan 2013: 45-48.
[93] Crenshaw 1991: 1296.

formations'.[94] This definition recognises the differences between women, the power dynamics among and between women,[95] and rejects the use of 'women' as an all-inclusive term which masks diversity, and papers over conflict between women.[96]

An intersectional approach, therefore, requires us to interrogate categories such as 'wives' and 'mothers' and look for differences as well as commonalities between women, as well as comparing and contrasting women whose experiences may intersect in one respect but diverge in another.[97] In Herodotus' narrative as a whole, there are important distinctions between women in terms of status and power, which may be more significant markers of difference than gender, for example, between wives and *pallakai*.[98] I will consider, therefore, how gender difference intersects with other markers of difference, such as social status, familial role and adherence to other normative constraints. Men as well as women have to negotiate a range of identities and roles, though ideology may seek to define subaltern groups like women, in a reductive way.[99] Moreover, as 'an intellectual descendent of narrative studies',[100] intersectionality offers a way to explore Herodotus' narrative, with its multiplicity of individual stories and examination of individual subjectivities and motivations.

[94] McCall 2005: 1771.
[95] Evans 2015: 39, 111.
[96] McCall 2005: 1776. See also Alibhai-Brown 2000: 216, 246. Malik 2006: 222.
[97] Rabinowitz and Richlin; 1993. However, they do not consider Herodotus.
[98] Boedeker 2011: 229; Sebillote Cuchet 2013: 421.
[99] On social model of intersectionality, 'a deconstructive move challenging the sameness/difference paradigms in law, politics, and civil society' see Cho, Williams Crenshaw and McCall 2013: 785-810; Crenshaw 1989, 1991; McCall 2005; Sjöberg 2012: 48-59 applying model to classical *oikos* and intersection of gender, class, ethnicity and age.
[100] McCall 2005: 1783.

However, there is clearly a tension between a theory in which the individual constructs her own identity narrative and the 'social reality of categorisation'.[101] Malik, for example, in considering multiculturalism, minority women and family law in the modern world, highlights the role of women in helping to re-create collective identity through reproducing and socialising future members of the group and passing on collective history and norms to the next generation, thus preserving the cultural boundaries and identity of their community.[102] The social reality of categorisation is also clear in the stories in the *Histories* which concern the socialisation of children. One story which illustrates how problematic this can be is that of Scyles, king of Scythia, who is shown to incite civil war by adopting Greek customs, such as the celebration of Bacchic rites (4.79.3). As a result of his upbringing by a Greek mother, who was from Istria and taught him to speak and read Greek (τὸν ἡ μήτηρ αὕτη γλῶσσάν τε Ἑλλάδα καὶ γράμματα ἐδίδαξε, 4.78.1), he is more inclined to Greek rather than Scythian practices, and displays this by dressing as a Greek and worshipping Greek gods (4.78.4). His performance of being a Greek leads to rebellion and his death at the hands of his brother. His mother's failure to assimilate Scythian customs, but preserve her natal *nomoi* and pass them on to her son, has disastrous consequences. This tension between social coercion and individual agency is a key aspect of 'living with the rules' which I will analyse in a number of Herodotus' stories.

8. A sociological model

> It is precisely because law is both god and gimmick, sacred and profane, objective disinterested, and a terrain of legitimate partiality that it persists and endures. Legality

[101] McCall 2005:1779.
[102] Malik 2006: 215.

> is composed of multiple images and stories, each describing a particular relationship between ideals and practices, revealing their mutual interdependence. [103]

I now consider a modern sociological model as a comparative study. Rather than attempt to define the rule of law, Sibley and Ewick researched what the concept meant to Americans in their everyday lives. They came up with a tripartite model which reflected the 'cultural narrative in people's accounts of law' based on interviews with people from a range of social, economic and racial backgrounds. This, of course, was in the context of a modern society with a written constitution, very different from ancient Greece. However, I find this model helpful to think about *nomos* in the *Histories*, because Herodotus too gives us a cultural narrative in which people are not just subject to law, but engage with it, even in situations where they have limited power.

In the first of the three cultural narratives the law is 'a magisterial, remote and objective force governing human affairs', which is to be both revered and feared, which is detached from everyday life and requires conformity, or supplication, in the face of judicial power. The second cultural narrative, however, sees law as 'a terrain for tactical encounters' and the boundaries that separate law from the everyday are understood to be 'relatively porous and fragile'. In this cultural narrative, law is a game requiring strategy and skilful manoeuvring. Those interviewed by Sibley and Ewick considered that, in this context, what mattered was having a good lawyer, someone who had the skills to play the game effectively. They also recognised that in practice those with power, money and status could 'play the law game' more effectively than those without those resources. The third cultural narrative identified by

[103] Sibley and Ewick 2000: 56.

Sibley and Ewick is what they term 'Up Against the Law'. In this account, people feel powerless; unable to keep law at bay, unable to play by the rules; recognising themselves as 'have nots', they respond with acts of resistance, either relying on their invisibility and social subordination, or telling their story to pass on the message that 'legality can be opposed if just a little'. The two sociologists emphasise that these three narratives are not mutually exclusive and that, as Pospíčil notes, people live with a plurality of rules. They argue that 'the so-called gap between the law on the books and the law in action might actually operate to define and sustain the law as a durable and powerful social institution'.[104]

In this thesis, I use these three cultural narratives to consider the multifaceted aspect of *nomos* in the *Histories*. Firstly, *nomos* unquestionably has a coercive aspect, making a despot of law. Demaratus tells Xerxes that it is '[the Spartans'] master which they fear much more than your men fear you' (ἔπεστι γάρ σφι δεσπότης νόμος, τὸν ὑποδειμαίνουσι πολλῷ ἔτι μᾶλλον ἢ οἱ σοὶ σέ, 7.104.4). I will examine this as theory and practice in chapter 5. However, in contrasting the Persian *nomos* of tyranny, which depends on fear of the ruler with the Spartan *nomos*, Demaratus draws attention to what is the most prevalent order backed up by threats in the *Histories*, the command of a tyrant.[105] I will explore throughout this thesis the extent to which such commands are compatible with Herodotus' concept of the rule of law. I will argue that tyrannical *nomos* is not always incompatible but Herodotus highlights, often by gender-related transgressions, the tension between the rule of the tyrant and the rule of law.

[104] Sibley and Ewick 2000: 49-56.
[105] Branscome 2013: 72n.49 draws this contrast between *nomos* as freedom under the law with Persian servitude under the rule of a king

However, there are those in the *Histories* who have the power and resources to approach *nomos* strategically. In chapter 4, I will analyse the stories of Anaxandridas and his negotiations with the Ephors (5.40), and Argeia who wants both of her sons to be king (6.52), to show that their creative approach to family *nomoi* contrasts with the Spartans' military *nomos* which is inflexible and coercive.

Finally, I consider those stories in the *Histories* where law is used to resist an oppressive situation. In chapter 1, I will argue that the story of the Carian women (1.146.2-3) is one of resistance to the rule of law as a coercive power which forces women into marriage with the men who killed their fathers. They show resistance in the home, creating a *nomos* whereby they reject social intercourse with their husbands at mealtimes or in forms of address. The story of Cyrus and Cyno analysed in chapter 4 also shows a slave woman exercising some agency in oppressive circumstances.

To summarise: the rule of law we encounter in the *Histories* is both coercive (the Spartans' δεσπότης νόμος, 7.104.4) and regulatory in that it relates to everyday life, the social, sexual and religious practices, which make *nomos* king of all (πάντων βασιλέα, 3.38.4). With some limited exceptions, legal and political institutions exclude women from power, but I will question how significant that is to Herodotus' concept of the rule of law. Legal pluralism, I aim to show, is the most productive model with which to analyse the range of *nomoi* which act as informal, but nevertheless powerful, constraints on the behaviour of men as well as women, as this theoretical framework recognises the significance of rules which are not recognised as 'law' in the positivist sense. By considering the rule of law from a gender perspective, I highlight the importance of the *oikos*, as well as political and legal institutions,

to the rule of law, and identify sources of authority which may not be reflected in formal political or legal institutions.

9. Scholarship on women in the *Histories*

In this section, I will survey the direction of scholarship on this topic and show, firstly, that the focus on 'women' does not do justice to the range of roles and identities that women and men have to negotiate in the *Histories*, and secondly, to argue that a structuralist approach based on the binary opposition of male and female reflects ideology but not necessarily practice, when we consider how Herodotus shows his characters 'living with the rules'.

Nearly 40 years ago, Carolyn Dewald published two articles on women in the *Histories*, in which she identified women not only as social actors, in partnership with men in establishing and maintaining social order, often defending society against transgressions of *nomos* by men, but also as cultural motif, symbolising the thin line in ancient societies between cultural survival and cultural extinction.[106] This reflected two strands of historiography at that time. The first sought to make 'women' a valid historical subject, to place the lives of women in a historical and cultural context, and was reflected, Dewald argued, in the *Histories* by Herodotus' effort 'to describe women as they were, or at least as Herodotus thinks they must have been'.[107] Tetlow argues that 'authentic historiography communicates truth insofar as it is grounded in the reality of the past, which must include the history of women as well as that of

[106] Dewald 1980: 11-18; 1981: 93-126, now republished with some amendments in Dewald 2013b: 151-179. See also Blok 2002: 227 on central role of women in all cultural and social relations in the *Histories*. Baragwanath 2012: 20 on Io, Europa, Medea and Helen (1.1-4) as cultural icons,

[107] Quotation not reprinted in Dewald 2013b: 151-179. Pomeroy 1975: xi 'to recover the record of those excluded by sex and class from participation in the political and intellectual life of their societies'. See also Johnstone 1998: 223-4 and edited volumes by Pomeroy 1991; Foley 1992; Fantham, Foley, Kampen, Pomeroy and Shapiro 1994; Hawley and Levick 1995; McAuslan and Walcot 1996.

men', reflecting Hale's view that female experience, as much as male experience, makes up reality.[108] However, this, I think, minimises the rhetorical aspect of ancient historiography. Thucydides, for example, did not include much female experience in his historiography and this does not make him inauthentic, but reflects his priorities as a historiographer.

The second strand of historiography concentrated on Herodotus as a storyteller, who uses symbols or theoretical concepts, such as 'alterity' to structure his narrative. This approach emphasised Herodotus' literary, rather than historical role. Gould's work reflected this dual approach. Women were visible in the *Histories,* playing a role in determining what happened, in stark contrast to the way the public world of political action appears in other Greek literature, but in structuralist terms, their function was 'to define the male role by opposition'.[109] Structuralist theory holds that human beings interpret the world and define themselves through a series of binary oppositions. Rosellini and Saïd used this model in 1978 to consider women's customs in the *Histories,* developing a theory of alterity based on the Greek norm of monogamy and the *oikos,* which they linked to Greek practice in agriculture, cooking and sacrifice, against which other groups 'bring to the stage different aspects of marginality, all of which are opposed to the norm but not exactly superimposable'.[110] For these scholars, the issue was the extent to which others were culturally distant from the Greek norm, a distance which they expressed in geographical terms: the further the 'other' was from Greece the more extreme the cultural difference. However, as Blok points out, this does not allow for the dynamics of time; in Rosellini and Saïd's article, there is 'hardly any history left

[108] Tetlow 2005: p. xi.
[109] Gould 1989: 130-1; 1980: 56. Flory 1987: 17-20 on concept of 'extreme opposites'. Cf. Foley 1992: xii 'Herodotus treats women in an extraordinarily different fashion from contemporary Attic poets'. Fisher 2002: 207 'Herodotus is very far from a simple appeal to the traditional Greek male fear of powerful women'.
[110] Rosellini and Saïd 2013: 215 (originally published in 1978)

in the *Histories*'.[111] One of the important aspects of *nomos* is that it can be changeable, flexible, and negotiable as well as coercive, and women as well as men are involved in this process, making any static model inappropriate.

Hartog's analysis of Herodotus' portrayal of the Scythians in Book 4 of the *Histories* was also expressed in polarity terms. He argued that the polarity between Scythians and Greeks is challenged when the Amazons arrive, introducing a male-female polarity. At this point in the narrative, the Scythians 'turn into quasi-Greeks', thereby destabilising the Greek-barbarian one.[112] Gray also used the polarity model to analyse the story of Cyrus and Cyno in Book 1 of the *Histories*, but she argued that the polarity between barbarian ruler and barbarian subject was more significant than gender difference; 'they [Mitradates and Cyno] are there to produce a dialectic on the nature of royal barbaric power through their difference'.[113] I will argue in chapter 4 that the difference between Mitradates and Cyno is as significant as their polarised position in relation to the king.

Cartledge argued that, for Herodotus, Sparta was the Greek 'Other' and so he treated the state in an ethnographical manner, comparing Spartan with Persian and Scythian practices, unlike other Greek states, and linking the madness of Cambyses with his Spartan counterpart Cleomenes.[114] He cited the example of Gorgo, to illustrate the 'otherness' of Spartan women.[115] Millender also argued that the polarity model was the key organisational principle of Herodotus, associating him with an Athenocentric conceptualisation of a 'barbarised'

[111] Blok 2002: 239.
[112] Hartog 1988: 367.
[113] Gray 1995: 194-5, 206.
[114] Cartledge 1993: 95. See also Mikalson 2002: 193.
[115] Cartledge 2002: 105-7. Pomeroy 2002: 124 on binary contrast between Spartan and Athenian women – both 'highly unusual Greek cities'.

Sparta as an exercise in self-definition, 'othering' Cleomenes as despot, for example, though she acknowledged the constitutional limitations on Spartan kings.[116]

This emphasis on polarities was reflected in wider scholarship. Edith Hall's *Inventing the barbarian,* published in 1989, argued that the ideological invention of the cultural 'other' was based on the story of the Greeks' conflict with the Persians, though she acknowledged the significance of sophistic thought on Euripides, for example, whose plays such as *Hecuba* and *Trojan Women* subverted the antithesis of Greek-barbarian on a moral level.[117] Jonathan Hall also identified what he termed 'oppositional' identity, which defined the Hellene through opposition with the non-Greek or barbarian.[118] Both these writers were writing principally about ethnic identity, whereas Foxhall, who also considered that binary oppositions were fundamental to ancient Greek culture, applied them to gender constructs, drawing a contrast between the polarising gender framework of the public world, and the integrative one of the private world.[119]

Joan Scott, however, a cultural historian, argued in 1986 against the fixed binary opposition of male and female as a permanent aspect of the human condition, arguing that history is often written as if such normative positions are arrived at consensually, and as a result, they then take on the appearance of timeless permanence. In fact, historical analysis shows that such positions are often the subject of debate and disagreement amongst those affected, and it is the

[116] Millender 2009: 9-15; 2002: 1-11.
[117] Hall 1989: 56, 217-223.
[118] Hall 1997: 32-3.
[119] Foxhall 1989: 23, 30-1. This structuralist approach whereby identity is created through opposition is also found in Just 1989: 153-193 (on attributes of gender in the Athenian *polis*); Cartledge 1993: 200; Hall 1989: 201-223 though she deconstructs the polarity in her epilogue by considering barbaric Greeks and noble barbarians and in her analysis of Andromache and *Troades* in Chapter 5; Hall 2006: 26-30; Hartog 1988; Demand 1994; Payen 2015: 215-217; Loraux 1986, 1993; Iriate 2013: 95-116.

historian's role to uncover the debate and show that cultural and political change is usually contested.[120] More recently, scholars have recognised that the polarity model was, in many ways, a product of its time. In an article published in 2006, Edith Hall reflects on the influence of the Cold War model of self and others on her 1989 book, and, 17 years on, frames the conflict in different terms, as the 'dialectical interpenetration of culture and especially propaganda' between Greeks and Persians, adding that it was important to recognise the impact on the Athenians of their homeland being penetrated and ravaged by Persians and allies.[121] Jonathan Hall now considers that his conception of 'oppositional identities' was very much a product of the intellectual environment of the 1990s, when structuralist theory was applied to ancient Greek literature, myth and ritual, and the concept, he argues, needs to be revisited in the light of network theory, which posits that ethnicity is 'continually constructed through practice'.[122] This reflects a wider move from structuralist polarities by those scholars who argue that we should instead be looking for networks of relationships, ways that individuals and communities interact.[123] Skinner suggests that identity is created through the process of negotiating boundaries and contestation, making boundaries between Greek and non-Greek permeable, not fixed.[124] Taylor and Vlassopoulos also argue that conflict and change are inherent in social processes and Vlassopoulos points out that social practice is more complex than law's categorical distinctions between, for example, slave and free; citizenship is not always the main or only marker of identity. Cohen critiques

[120] Scott 1986: 1053-1075.
[121] Hall 2006: 11, 31, 36. Her language suggests that political and military dominance are experienced as rape.
[122] Hall 2015: 28-9, 94 in critique of the work of Ferdinand de Saussure in linguistics and Claude Lévi-Strauss in anthropology. Joan Scott 1986: 1064 critiques Lacanian theory for 'tending to universalise the categories and relationships of male and female'. For a critique of Freudian and Lacanian psychoanalytical theory applied to a classical text, see Griffith 1999: 60-3 on *Antigone*.
[123] Vlassopoulos 2007: 58; Taylor and Vlassopoulos 2015: 10-13; Malkin 2011: 212 on 'networks of affinity' between a founding city and its colonies; Gruen 2011: 3, 39 on ambiguities of cultural identities.
[124] Skinner 2012: 28; Thomas 2000: 122; Pelling 1997: 50-66.

the ‘citizen-club’ model of Athenian democracy, which casts non-citizens as passive objects of exclusion, domination and exploitation.[125] Jonathan Hall argues for an alternative to the oppositional model of identity, whereby one’s Greekness is defined through opposition with the non-Greek, which he suggests became more prevalent after the Persian wars. He terms his second model ‘aggregative’, that is it is based on shared kinship, territory and history, and recognising similarities rather than differences between peer groups, which, he argues, was more prevalent in the Archaic period. This model allows for degrees of difference rather than positing polar opposites.[126]

Scholars have also recognised the need to distinguish between women, rather than take a polarity view of gender. Foxhall**,** in her book *Studying Gender in Classical Antiquity*, published in 2013, takes an intersectional approach to gender, emphasising that lived reality is more complex than the male/female dichotomy, and arguing that we should view the activities of the *oikos,* for example, as subject to negotiation, rather than being based on defined and separate spaces, so that men as well as women have to avoid contravening gendered conventions.[127] Sebillote Cuchet notes how male/female characteristics vary according to their discursive context and are not necessarily in opposition.[128] In Herodotean studies, a similar shift can be seen. Gray, for example, who analysed the story of Cyno and Mitradates in polarity terms, more recently takes a network approach to the story of Melampus in the *Histories,* to argue that Herodotus is interested in how cultures are introduced and imported leading to adaptions, thereby producing ‘a global village looking for connections’.[129]

[125] Taylor and Vlassopoulos 2015: 14. Cohen 2000: 30-48. See also Forsdyke 2012: 144-5 for role of women in informal social practices.
[126] J. Hall 2015: 25, 29.
[127] Foxhall 2013: 158-9.
[128] Sebillote Cuchet 2013: 430.
[129] Gray 1995: 206. Gray 2012: 184-5.

Boedeker, in her article on Persian gender relations in Herodotus, analyses interactions between male and female, and observes that both sexes, Greek and barbarian are able to act outside the constraints of *nomos* if they have power.[130] Brosius, Kuhrt and Sancisi-Weerdenburg have done valuable work exposing the orientalist bias of historians who portray Persian women generically as cruel, aggressive, and manipulative, who have too much influence over men in power.[131] As Brosius points out, this reflects an ideology which projects Greek anxieties about gender performance onto a convenient 'other': women, Persian and Greek, who are characterised in gendered terms as extremely emotional or extreme in action.[132] Sancisi-Weerdenburg reminds us we need to distinguish between Persian women in literature and in history, and points out how little we know of the history of Persian women at the time of Herodotus. Most have left no trace in the record and those that have, have acquired a notoriety based on Greek literary sources.[133] She argues for a more careful reading of Herodotus which does not 'reinforce the tendency to see the Orient as female, weak and worthless and Western civilisation as male, valiant and valuable.'[134] Herodotus does, of course, give us the 'external' view of a Greek on Persian *nomoi*, but I will demonstrate that he is more nuanced than most in his portrayal of Persian women, and that he interrogates the generic picture of Persian women outlined above by showing that they engage in different ways with Persian *nomoi*. However, Harrison warns against reading the stories as purely a function of Greek misogyny or ignorance; the stories of male and female cruelty may be true.[135]

[130] Boedeker 2011: 212, 227-232 - 'the ideologically inferior woman is more clever, persistent or courageous than her 'superior' male counterpart' (227).
[131] Brosius 1996: 1-2, 195-8; Sancisi-Weerdenburg 2013: 135.
[132] Brosius 1996: 2-8, 112.
[133] Sancisi-Weerdenburg 2013: 135-6.
[134] Sancisi-Weerdenburg 2013: 148.
[135] Harrison 2011: 65-72.

With regard to Sparta and women, Bresson argues that the binary opposition of Athens and Gortyn masks a diversity of inheritance systems and 'we should not translate the biased and hostile ideology of other Greeks towards the Spartan situation into a scholarly judgment. For non-Spartan theorists living in male-dominated cities, a form of female autonomy was a pure scandal. Interestingly, most of them were Athenians, or men who had lived in Athens. The exception is Xenophon'.[136] The disagreement between Hodkinson and Hansen on the 'exceptional' nature of Sparta generally makes this an ongoing matter of debate.[137] Flower makes the point that Spartan society was 'continually being reinvented', so it is impossible to interrogate 'the position of women in ancient Sparta'.[138]

In this study, therefore, I will explore the network of relationships and the range of roles and identities that women and men have to negotiate, rather than seek to analyse Herodotus' stories in which gender plays a significant role, in terms of gender polarities. For example, I will draw a contrast between the coercive military *nomos* of the Spartans and the more flexible approach taken by their royal families, both male and female, to family *nomoi*. I will also question whether practice mirrors gender ideology by using the story of Artemisia to interrogate Herodotean concepts of *andreia*, and in the context of tyranny, I will examine how significant gender difference is when compared with the challenges for both genders of negotiating court hierarchies and royal power.

[136] Bresson 2016: 61, 58-59 on image of Sparta as part of Athenian self-imaging.
[137] Hodkinson 2009. *Sparta: Comparative Approaches*: Hanson 385-416; Hodkinson 417-472.
[138] Flower 2002: 209 criticising Pomeroy 1997.

10. Definition of terms

10.1 Gender

> Gender is socially constructed; it is imparted through socialisation and culture rather than inherent.[139]

This statement and the term 'gender' is by no means uncontested. The term 'gender' has come to be used, since the 1970s, as a way to distinguish the social, cultural and political regulation of sexual difference from biological difference.[140] Gender, therefore, what it means to be male or female, is a social construct. However, the Gender Recognition Act 2004 uses the term 'gender' to refer to the sex, male or female, one is assigned at birth. As Scott notes, the issue is partly political and philosophical, 'a matter of contested meanings both explicit and implicit'.[141] A recent United Nations resolution to combat the use of rape as a weapon of war which included the word 'gender' was opposed by a number of countries, including the USA, on the basis of their claim that the word 'gender' is a cover for the liberal promotion of transgender rights.[142] The word, therefore, has no universal accepted meaning and attempts to define it are difficult.

When using the term to apply to the *Histories*, therefore, I think it is more important to think of gender, as with *nomos*, as a concept rather than trying to define the word, a concept which embraces the practice of gender roles, both masculine and feminine, the ideology of gender difference, and the gap which sometimes emerges between the two, that space which

[139] Fineman 2004: 156.
[140] For example, Rubin 2011: 41 'the social organisation of sexuality and the reproduction of conventions of sex and gender'; Scott 1986: 1056 'the entirely social creation of ideas about appropriate roles for men and women'.
[141] Scott 1999: 10.
[142] *https://www.theguardian.com*, accessed 22/04/19.

problematises a belief based on the essential difference between male and female. Scott encourages us to historicise gender categories, to 'open ourselves ... to the idea and possibility that things have been and will be different from what they are now' by asking questions such as: How do laws, rules and institutional arrangements refer to and implement sexual difference? In what spheres does the performance of normative sex roles matter? How are relationships of power consolidated by appeals to sexual difference?[143] I argue that this is a more productive way to approach gender in the *Histories*, as interactive rather than binary, as 'living with' the rules of gender. I will address the first two questions in chapters 3 and 4. The relationship of power to gender will be a dominant theme in chapter 5, when I explore the relationship of women to power and performances of masculinity in the public sphere, by women as well as men.

10.2 Performativity

West and Zimmerman introduced the concept of 'doing gender', of managing situations so as to perform in a gender-appropriate way.[144] Masculinity and femininity, therefore, are not natural, essential properties of individuals but 'social properties of a system of relationships'.[145] In this model, gender is a collective performance, regulated and evaluated by others, to whom one is accountable.[146] Griffin expresses this in explicitly performance terms. A convincing display of gender requires a script (acquired through the socialisation process), props (appearance, speech and gesture) and an audience which understands the performance; 'the dominant social group will not be those who embody the normative ideal but those who

[143] Scott 1999: 202, 206, 218.
[144] West and Zimmerman 1987: 129-148.
[145] West and Zimmerman 2009: 114, 112-122.
[146] Griffin 2018; 387 'the efforts that men make to appear 'manly' have to be recognised by others if they are to be successful'.

can most plausibly present themselves as so doing'.[147] The performance of manliness (*andreia*), therefore, means not only acting in a manly way but also being judged by others to do so; '*andreia* has to be attributed to you by others'.[148]

Those activities, therefore, based on sex category, are reinforced and legitimised by being judged to be performed appropriately, whereas the character, motives and predispositions of those who perform inappropriately are called into question.[149] Butler echoes this when she writes of the performance of gender as 'repeated actions which confer social legitimacy'.[150] In chapter 5, I will show how the ideology of female inferiority is used by characters in the *Histories* as a persuasive strategy to make men fight, and as a way to explain military defeat or victory in the field. I will also analyse the performance aspect of gender, in particular of masculinity in the context of war, and I will consider relationships between men and the creation of hierarchies, not only in the Persian court, but also in the Greek alliance.

West and Zimmerman also point out that normative conceptions of the appropriate attitude and activities are variable and can change with time.[151] Again, this links to one of Hart's secondary rules, the rule of change, which provides necessary flexibility in any legal system. I will argue, therefore, that Herodotus shows both femininity and masculinity to be social constructs rather than an innate characteristic of women and men by making the performance of gender a *nomos* which is changeable, can be deceptive and depends on the judgment of others. In this way the performance of gender is in tension with the binary construct of male/female in gender ideology.

[147] Griffin 2018: 387-391 on gender performance.
[148] Rosen and Sluiter 2003: 4n.8, 8 (quotation).
[149] West and Zimmerman 1987: 146.
[150] Butler 1990: 185-193 on performativity of gender.
[151] West and Zimmerman 1987: 148n.3.

11. Summary of chapters

In chapter 1, I explore the origins of *nomos*, and discuss the function of divine rules in Herodotus' narrative, and the significance of oaths as an integral aspect of law enforcement. I analyse the stories of three important lawgivers in the *Histories*, Solon, Lycurgus and Deioces, arguing that they set a template for their communities which has ongoing significance, tested as 'law in action' in later chapters. I use a case study from the story of Solon and Croesus to argue that Solon's role in the *Histories* is not primarily to create institutions or laws, but to educate Croesus that the rule of law includes respecting the reciprocal relationship between gods and humans, which the powerful sometimes forget. With regard to Sparta, I argue that we need to separate Lycurgus' introduction of *eunomia* from the institutions he creates, to appreciate the dynamic aspect of *nomos* within the Spartan regime. I then show how the *nomos* of tyranny arises in the context of a community's need and demand for law and order, through analysing the story of Deioces and the Medes. Finally, I use the story of the Carian women who create *nomoi* as a response to the coercive actions of Athenian men for which they have no formal remedy under the rule of law, as defined in its 'thin' sense, as a case study to show that Herodotus' expansive concept of *nomos* includes women as lawmakers.

In chapter 2, my focus is on what *nomos* is for, and the legal processes which implement and enforce *nomos*. I use a case study on the foundation of oracles at Dodona and Siwa to illustrate Herodotus' legal method, and to place him in the intellectual world of 5th BCE when *nomos* was being discussed, contested and debated. I also argue that Herodotus' methodology is both adversarial and inquisitorial, making his approach very different from the Athenian

orators of the 4th century BCE. I argue that we understand Herodotus' concept of the rule of law through his use of informal speech acts, by women as well as men, rather than through law court scenes, or forensic oratory which is largely absent from the *Histories*. I use two contrasting models of modern law to show that, just as modern law can be coercive, regulatory or facilitative, so the rule of law in the *Histories* has several aspects, as punishment, as regulation, and as agent of social cohesion.

In chapter 3, I discuss the key elements of female gender performance, that is, appearance, speech, and conduct; how women are seen, how they are heard, and how their conduct is judged. I then consider two stories about Athenian women, one from the Athenian/Aeginetan dispute, one when they join with Athenian men in an act of violence against Lycides and his *oikos*, firstly, to question the effectiveness of male sanctions when women are judged to break the rules, and secondly, to show that, in the circumstances of war, both the ideology and the institutions of the Athenian *polis* are disrupted, threatening the rule of law and the Athenian *nomos* of *isēgoriē*. Finally, I argue that the story of the Amazons, in the hands of Herodotus, is a thought experiment in a different world setting, used to interrogate both law and gender, which effectively deconstructs their place in Athenian ideology, as female warriors who must be defeated.

In my fourth chapter, I consider in more depth how *nomos* regulates domestic relationships. I focus on royal households, because this is where Herodotus sets most of his stories which concern family relationships, using case studies to show the variety of responses to the *nomos* of tyranny, and to analyse how people of both genders are shown to 'live with' the rules. Firstly, I use the story of Candaules and his wife as a case study, to show that the rule of law

applies in the *oikos*, when a woman's honour is impugned and a man breaks the rules. I then discuss the political and rhetorical significance of the royal *oikos* through the story of Cambyses' wife, which illustrates female vulnerability in a dangerous *oikos* and the risks of defending the rule of law in a domestic setting. I analyse another dysfunctional *oikos*, that of Xerxes, where the contrast is between those, like Masistes and his wife, who defend the values of the *oikos*, and Xerxes, his wife and Masistes' daughter, who violate those values in differing ways.

I then consider case studies from the Spartan *logos* to interrogate the assertion that the Spartans obeyed the rules in terms of religious practice, showing how they manipulated as well as obeyed oaths and oracles. I argue that stories in which oaths are a significant feature often raise questions about credibility, which problematises any straightforward equation of oaths with coercion and enforcement; the power of oaths can be manipulated by some actors, of both genders. I show that the rules can be treated as more flexible by those who have power.

In the second part of this chapter, I use the story of Cyrus, Astyages and Cyno as a case study in tyrannical breach of the rule of law by those who destroy, rather than protect the *oikos*. I conclude with the story of Intaphrenes' wife, comparing it with Sophocles' *Antigone*, to argue that there is a fundamental difference between the two stories based on the different approaches of the protagonists to law and gender. Intaphrenes' wife enters into dialogue with Darius, who adopts an inquisitorial role, whereas the exchange between Antigone and Creon is adversarial, characterised by antagonism, conflict and opposition.

In my fifth chapter, my focus is on performances of masculinity, in the context of the Spartan *nomos* of 'win or die', which, in an ideological and institutional sense, excludes women. I place Herodotus in an intellectual framework where the meaning of *andreia* is increasingly contested. I then discuss the extent to which the constraints of *nomos* and of gender apply to women who perform a masculine role in exercising military and political power, using the stories of Artemisia, Tomyris and Pheretime as case studies. I argue that Herodotus uses the character of Artemisia to highlight the contested aspect of *andreia*, both in speech and action, and that both she and Themistocles are shown to be characters of *mētis*, able to manipulate rules and relationships to succeed. I show that powerful men sometimes underestimate female capacity and do not live up to gender expectations themselves; conversely women sometimes defy those expectations. However, I conclude that the downfall for Cyrus, Pheretime and Xerxes is ultimately because they violate the rule of law by seeking to go beyond boundaries that separate humans from gods; they are corrupted by power. In this way, Herodotus signals his concept of the rule of law in its 'thick' aspect as a universal value which has power over everyone, whatever their status.

CHAPTER 1: WHERE DO THE RULES COME FROM? WHO MAKES THE RULES?

Introduction

There is a clear concept of the rule of law in both Demaratus' words to Xerxes that law is master (δεσπότης νόμος, 7.104.4) and in Herodotus' observation as narrator that law is king of all (νόμον πάντων βασιλέα, 3.38.4). Where does this concept come from? That is one of the questions I will consider in this chapter, in the light of Hart's argument that any functioning legal system needs a rule of recognition, that identifies the foundational rule, or, in other words, the authoritative source of law, and imposes a duty to implement and enforce that law.

I start by considering the gods as a source of *nomos*, arguing that Herodotus shows their role as lawgivers to be of less significance than their role in interpretation (through the Pythia) and enforcement (through oaths and divine punishment). I then analyse the stories of three important lawgivers in the *Histories*, drawing a contrast between Solon, Lycurgus and Deioces, and the institutions they create, but arguing that all three achieve a level of legitimacy in that their introduction of *nomos* is accepted by the community. However, the rule of law they create has very different ramifications, which are often illuminated through gender practices and transgressions.

Finally, I discuss the story of the Carian women who institute a new social practice through creating a *nomos* which binds daughters through oaths but also influences their social intercourse with men. Oaths play a key role in this story in making the *nomos* enforceable and ensuring that it is implemented from generation to generation. This story also supports the

legal realist position that people are subject to a range of rules, which can coerce, enable or be resisted, depending on circumstances, and feminist legal theory which highlights the significance of the regulation of the domestic sphere.

In this chapter, I consider in what sense we can find the 'thick' definition of the rule of law in the *Histories*, and I will argue that one way that Herodotus shows his commitment to a concept of the rule of law, which is of universal application, is by showing that those who violate *nomos* often do so in the context of violating key religious practices and beliefs,[152] ignoring the boundaries between the mortal and the divine, or forgetting the limitations of human knowledge and the unpredictability of the divine. For example, the 'great nemesis from the god' (ἐκ θεοῦ νέμεσις μεγάλη, 1.34.1) descends on Croesus, in Herodotus' estimation, because in all likelihood (ὡς εἰκάσαι, 1.34.1) he thought he was the happiest man in the world. Divine retribution is the possible explanation for Croesus' reversal of fortune. It is not his success that invites νέμεσις but his hubristic over-confidence.[153]

1. Living with divine rules

When Croesus asks the god if it is his rule to deceive his benefactors (εἰ ἐξαπατᾶν τοὺς εὖ ποιεῦντας νόμος ἐστί, 1.90.2) and Hermotimus refers to the rule followed by the gods being one of justice (νόμῳ δικαίῳ χρεώμενοι, 8.106.3) in handing Panionius into his control, Herodotus suggests that gods as well as mortals have *nomoi*. The divine nature of *nomos* is an idea that is found in epic, philosophy, and drama.[154] For example, in Hesiod, Zeus 'lays down this rule for men' (τόνδε γὰρ ἀνθρώποισι νόμον διέταξε Κρονίων, Hes. *Works and Days*. 276)

[152] Harrison 2000: 221 on religious practice as a subset of *nomoi*
[153] Cairns 2019: 87. Asheri 2007: 105 noting this is the only use of νέμεσις in the *Histories*; Dillery 2019: 18 links Croesus' *nemesis* to his resistance to Solon's judgment.
[154] Harris 2004: 26-29.

and in a Heraclitus fragment: 'For all human rules are nourished by the divine one' (τρέφονται γὰρ πάντες οἱ ἀνθρώπειοι νόμοι ὑπὸ ἑνος τοῦ θείου, Herakleitos 22B 114 DK).[155] Euripides also gives Hecuba a speech in which *Nomos* is personified as a rule controlling even the powerful gods (οἱ θεοὶ σθένουσι χὠ κείνων κρατῶν Νόμος, E. *Hecuba*.799-800).[156]

However, the boundary between divine and mortal agency can be 'malleable and problematic'.[157] Sophocles dramatises a debate on the meaning and origin of *nomos* in *Antigone,* exploiting, Harris argues, the ambiguity in Athenian concepts of *nomos* to create tragic misunderstanding.[158] Creon and Antigone do not agree on what constitutes *nomos*. For Creon, his edict forbidding the burial of Polyneices is a *nomos* which must be obeyed. Antigone, however does not recognise his edict as a *nomos*; she calls upon the unwritten rules of the gods.[159] I will analyse this *agōn* in greater detail in chapter 4, when I discuss the story of Darius and Intaphrenes' wife. This ambiguity at the heart of *nomos* is also reflected in the Heraclitus fragment. Kahn notes in his commentary that the phrase '(nourished) by the divine one' is ambiguous in that it can be construed either in the neuter, with 'the divine' (*theion*) as a term for the supreme cosmic principle, or as the masculine form agreeing with *nomos*: 'the one divine law'. He argues that this duality is deliberate; the single divine principle, 'what is common to all' is both part of, and separate from, *nomos*, which is associated with human and

[155] Kahn 1979: 42-43 text and translation.
[156] Ostwald 1969: 38n.4; Heinemann 1945: 121-2; Conacher 1998: 66 read this as a loss of confidence in the gods whereas Mossman 1995: 124-125 argues that Hecuba is speaking appropriately for the occasion, for the community as well as herself. Mossman's argument is supported, in my view, by the place of Hecuba's declaration of the universal power of *nomos* in a speech which aims to, and succeeds in, persuading Agamemnon to sanction her act of revenge on Polymestor. He is convinced by her that Polymestor merits punishment, saying himself that he wishes her to receive due recompense both from the gods and from justice (E. *Hecuba* 852-3). He accepts her declaration, though she is both female and a slave, that there is a universal aspect to *nomos* which has power over everyone including the gods.
[157] Willey 2016:180.
[158] Harris 2004: 21.
[159] Harris 2004: 19-56 on 'Antigone the lawyer'.

social rules. Heraclitus, therefore hints at, but does not express, the notion of a 'divine law' (*theios nomos*).[160]

The ambiguous relationship between mortal and divine is also to be found in the *Histories*. When Croesus asks the god if it is his *nomos* to deceive, and Hermotimus refers to the *nomos* followed by the gods being one of justice, Herodotus is not showing us the divine origin of rules which regulate human interaction, but rather developing his theme in the *Histories* that relationships between gods and humans are based on reciprocity, which requires negotiating successfully the boundary between the divine and the mortal. Croesus is complaining that the god, through the oracle, had misled him, despite his many dedications to Delphi, gifts which he thinks should earn him the gods' favour.[161] In a very different context, Hermotimus seeks divine authority to justify his own act of reciprocal revenge, in having Panionius, the man who had castrated him, castrated by his sons.[162] I will analyse the story of the mother of Cleobis and Biton as an example of divine-human reciprocity in this chapter and consider the significance of the Harmotimus story in chapter 5.

In this chapter, I will show that, in the *Histories*, those who create rules require some form of divine authority.[163] 'Living with the rules of the gods' means accepting their role in policing

[160] Kahn 1979: 117-8. Willey 2016: 181 on Heraclitus fragment and Plato's *Crito* affirming 'a kind of kinship' between divine and human law.
[161] Parker 2011: x on *charis*, the exchange of gifts and favours being the basis for the reciprocal relationship between gods and men. Gould 1994: 105 'ritual action creates and maintains a relationship of reciprocity'.
[162] Braund 1998: 159-180.
[163] Willey 2016: 177 'legislation is often a product of mortal and divine interaction'.

human activity, and punishing excess, often in the context of gender transgression.[164] The gods also have a role in enforcing human *nomoi* through oaths.

2. Oaths

When *nomoi* impose obligations, these are often secured by oaths, described by Bayliss as 'typically seen as a binding contract that must be fulfilled, regardless of whether doing so would benefit the parties involved'.[165] The story of Glaucos certainly supports this viewpoint; he holds a sum of money on trust for a Milesian, secured by exchange of tokens. When the man's sons come to Sparta with tokens to claim back the money, Glaucos asks the Delphic oracle if he could steal the money by swearing that he did not have it (εἰ ὅρκῳ τὰ χρήματα λήίσηται, 6.86γ1). The oracle warns him that if he does this, he will make an immediate profit but in the longer term he will be pursued by oath's child who will destroy all his children and his household. This is the outcome for Glaucos, even though he pays back the money. I will show the significance of the destruction of the *oikos* in chapter 4.

Oaths, therefore, play a key role in making performance of rules obligatory, so Solon makes sure that the Athenians are bound by oaths (ὁρκίοισι γὰρ μεγάλοισι κατείχοντο, 1.29) when he makes laws for them. Oaths are also used in a functional sense in the *Histories* to cement alliances, as in the exchange of oaths of friendship between Hippocrates of Gela and the Samians (6.23.4), to protect a trading monopoly, as at Naucratis (2.179), to seal a joint commitment, for example, by the Carian women (1.146), to form a military alliance of

[164] Scullion 2006: 208n.43 for divine check on excess citing Pheretime (4.205), Leotychides (6.72.1) and Cleomenes (6.84.3). Braund 1998: 164-5 on reciprocal vengeance human-divine in story of Hermotimus (8.104-6). Mikalson 2003: 36-7 on divine role in punishment.
[165] Bayliss 2009: 232.

Peloponnesians to fight the Persians (7.235.4), or as a trick, to break the siege of Barca (4.201).[166]

West argues that the medieval or classical world view on the sanctity of oaths meant there was no need for civil remedies as vengeance from the gods would be visited on those who broke their oaths.[167] This presupposes not only a belief in the supernatural force of an oath, but that perjury will be punished. This is not always the case in the *Histories*, however; oaths are not necessarily binding.[168] Half the Phocaeans (1.165.3) break their oath to emigrate, though they face an imminent Persian invasion, and Themiston (4.154) devises a clever means to save the life of Phronime, despite his oath to her father. I argue that it is not only the obligation imposed by the oath, but the possibility that it might be broken that makes it an ideal storytelling motif with which to explore evidential questions of credibility, a key aspect of Herodotus' legal method, as I explore in my next chapter. Oaths are a significant feature of the Spartan *logos* in the *Histories* and they always involve contested accounts and trickster characters, reflecting how Spartans were seen by others. As Cyrus said about them, they meet in the agora, swear oaths and deceive each other (ἐν μέση τῇ πόλι ἀποδεδεγμένος ἐς τὸν συλλεγόμενοι ἀλλήλους ὀμνύντες ἐξαπατῶσι, 1.153.1). Herodotus, therefore, signals that oaths are both very serious, and open to manipulation, and evasion, both 'a sacrosanct element and a social weapon'.[169] The coercive aspect of oaths is illustrated by the story of Glaucos, and also in that of Xerxes, who makes a promise to Artaynte, supported by an oath (ὤμοσε, 9.109.2) which he has to keep.

[166] On oaths and dispute resolution: Thür 1996: 57-72; Faraone 1999: 99. Bayliss 2009: 231-260 on Spartan oaths and duplicity. The trick on the Barcaeans uses oaths as a military weapon, to break a siege. Low 2007: 118-126 on role of religion, including oaths as form of sanction, which relies on divine and human interaction.
[167] West 2003b: 438-447.
[168] Harrison 2000: 109.
[169] Lateiner 2012: 168.

However, the coercive aspect of oaths also makes them an effective tool. Democedes, for example, makes Atossa swear that she would repay him by granting whatever he asked of her (ἐξορκοῖ μιν ἦ μέν οἱ ἀντυπουργήσειν ἐκείνην τοῦτο τὸ ἂν αὐτῆς δεηθῇ, 3.133.2), when he agrees to treat her breast abscess, and Themistocles bribes Adeimantus to stay and fight, rather than retreat to the Isthmus, by securing the agreement with an oath (ἐπομόσας, 8.5.1). The exchange between the Ephors and the Athenian envoys (9.11) is under oath but, as Bayliss points out, the Spartans are not playing by the 'cooperative principle' rules; the Athenians have to keep questioning them to get to the truth.[170] As Marmor argues with respect to modern law, sometimes the aim of legal discourse is non-cooperation.[171] I will explore this further with stories from the Spartan *logos*, in chapter 4. Oaths, therefore, are an important enforcement mechanism, involving the gods, but can also be manipulated by some who exploit their coercive power.

3. Lawgivers

3.1 Solon

> And among them came Solon the Athenian, who, after making rules for the Athenians at their request, went abroad for ten years, sailing forth to see the world, he said. This he did so as not to be compelled to repeal any of the rules he had made, since the Athenians themselves could not do that, for they were bound by great oaths to abide for ten years by whatever rules Solon should make.
>
> καὶ δὴ καὶ Σόλων ἀνὴρ Ἀθηναῖος, ὃς Ἀθηναίοισι νόμους κελεύσασι ποιήσας ἀπεδήμησε ἔτεα δέκα κατά θεωρίης πρόφασιν ἐκπλώσας, ἵνα δὴ μή τινα τῶν νόμων

[170] Bayliss 2009: 239.
[171] Marmor 2001: 193-217.

ἀναγκασθῇ, λῦσαι τῶν ἔθετο. αὐτοὶ γὰρ οὐκ οἷοί τε ἦσαν αὐτὸ ποιῆσαι Ἀθηναῖοι: ὁρκίοισι γὰρ μεγάλοισι κατείχοντο δέκα ἔτεα χρήσεσθαι νόμοισι τοὺς ἄν σφι Σόλων θῆται. (1.29.1-2)

Unlike Lycurgus, who creates institutions for the Spartan *polis*, or Deioces who creates a system of centralised tyranny, we get no information in this passage about the nature of the *nomoi* which Solon creates for the Athenian *polis*, or Athenian institutions, though Herodotus later in the *Histories* says that he introduced an Egyptian law created by Amasis into the Athenian legal system (2.177).[172] However, in terms of the rule of law, this passage highlights one way that *nomos* comes into existence, through human request not divine intervention, yet the gods are involved in enforcement, through the imposition of oaths. This introduces a coercive element which Herodotus signals is necessary to ensure that Solon's *nomoi* are implemented.

There are further aspects of the Solon narrative that relate directly to the rule of law. Law comes from a two-sided negotiation with the Athenians. Solon responds to their request for laws, and both he and the Athenians commit to a ten-year trial period, when Solon leaves Athens and the Athenians seal their commitment with oaths, showing that both parties accept the obligation to be bound by the rules which Solon creates. The model, therefore, is not that of a monarch who imposes legislation. Solon separates the rule from the exercise of power, which makes him unusual; the other person who does so in the *Histories* is Demonax, sent by the Mantineans to Cyrene as arbitrator (4.161).[173] This makes both men outsiders, with a

[172] Asheri 2007: 372 on relationship between Solon and Amasis being an unreliable tradition.
[173] Livingstone 2016: 36-40. Harris 2006: 298-301.

claim, therefore, to 'impartial universality'.[174] This contrasts with Deioces, whose motivation as a lawgiver is to become tyrant, to get power for himself, as I analyse below, and who creates a structure which forces obedience and compliance.

Is Solon's significance in the *Histories*, therefore, that he makes laws for the Athenians? Willey argues that his role as legislator – 'one who brings order and justice to the city and promotes its success and values' – is key to his wider presentation in the *Histories*.[175] I think this reading owes too much to the Solon of poetry and later tradition.[176] His portrayal by Herodotus relates, I argue, not only to his position in social memory as a travelling wise man and lawgiver, but also to his role in warning Croesus of the limits of human ambition and power.[177] His overall message that 'everything human is a matter of chance'(πᾶν ἐστὶ ἄνθρωπος συμφορή, 1.32.4)[178] is one which the powerful in the *Histories* tend to forget and is linked to the divine *phthonos* which punishes those who assume godlike powers and think they can ignore the boundary between mortal and the divine.[179] Cairns expresses this as violating others' legitimate claims to respect; 'in all behaviour which attracts divine *phthonos* will be found the same elements of the transgression of limits, of the offender's excessive pursuit of honour and status and of the corresponding insult to the *timē* of the gods'.[180] There

[174] Willey 2016: 196.
[175] Willey 2016: 189n.62.
[176] On which Blok 2006: 197-247; Harris 2006; 290- 318; Tsakiropoulou-Summers 2019: 33-56; Scafuro 2006: 175-196
[177] Stehle 2006: 104; Mossman 2006: 292; Redfield 1985: 97-118; Willey 2016: 195.
[178] Baragwanath 2008: 108 for translation.
[179] Dewald 2011: 54-5 'Wealthy and powerful people in the *Histories* as a general rule come to grief because they do not see how vulnerable they are to the fact of transience and the process of change'.
[180] Cairns 1996b: 22, 32 '*timê* is the concept with reference to which are balanced the claims of the individual and the rights of others'; 2019: 74-78. Ellis 2016: 75-76 on the theological motifs of divine *phthonos* and the instability of human fortune. Asheri 2007: 38 - jealous gods 'cannot bear excessively successful human beings, their self confidence, boundless power, arrogance and, worst of all, their inborn tendency to transgress the limits imposed on them by nature or law'. See also story of Polycrates (3.40) for the *phthonos* of the divine. Harrison 2000: 39 'divine jealousy disturbs human

is, therefore, a concept of a universal rule of law which involves divine intervention and sanction.

Solon illustrates this with two stories which have a strong gender element. He first tells the story of Tellus of Athens, who was prosperous throughout his life, had fine, noble sons (καλοί τε κἀγαθοί, 1.30.4) and surviving grandchildren, and who died a glorious death (ἀπέθανε κάλλιστα, 1.30.5) in battle and was honoured by the Athenians as a result (ἐτίμησαν μεγάλως, 1.30.5). This is a conventional view of happiness based on material wealth, family, a long life and an honourable death, and is a remarkable paradigm of the normative male because, as Dewald puts it, 'his achievement is one that none of the thousands of individuals who populate Herodotus' long narrative come close to equalling'.[181] Tellus, therefore, is an exemplum of 'hegemonic masculinity',[182] combining wealth, prowess in battle and familial good fortune. This model of the normative male which foregrounds family as well as prowess in battle is not specifically Athenian; the Persian king rewards those who produce the most sons (1.136.1).

In the second story told by Solon, Cleobis and Biton pull their mother, priestess to Hera, in a cart to the sanctuary, for the festival of Hera at Argos, witnessed by Argives, male and female. The men congratulate (ἐμακάριζον, 1.31.3) the boys for their strength, the women congratulate their mother for having such children. Cole reads this as a ritual speech act, a 'public ritual pronouncement of happiness, prosperity and a blessing from the gods'.[183] This story certainly illustrates that festivals are a form of collective activity, which validates this

affairs' citing role of gods in destruction of Troy (2.120.5) and Persians off Euboea (8.13). Cartledge and Greenwood 2002: 369-370 on divine jealousy.

[181] Dewald 2011: 65.

[182] Griffin 2018: 377 for rhetorical privileging of one type of masculinity with this term.

[183] Cole 2004: 147

woman's agency in ritual practice and her performance as priestess, showing her in the public sphere, with a public voice, performing a public function.[184] However, I read it also as a speech act which praises gender performances; men respect and admire physical strength, women see it as a matter of good fortune to have sons with this quality.[185] This aspect of the story, therefore, like the story of Tellus, reinforces both male and female gender norms, emphasising the significance of family in both instances.

However, there proves to be a tension between this woman's role as mother, and her role as priestess, in that, through her religious actions, she causes the death of her sons. She is the actor in this story and it is her feelings that are focalised, in particular her excessive joy at what they had done and the fame it would bring (περιχαρὴς ἐοῦσα τῷ τε ἔργῳ καὶ τῇ φήμῃ, 1.31.4). The adverb περιχαρὴς always foreshadows disaster, whether actual or pending, in the *Histories*.[186] In this case, the mother is responding to the women's speech act congratulating her (αἱ δὲ Ἀργεῖαι [ἐμακάριζον] τὴν μητέρα αὐτῶν, οἵων τέκνων ἐκύρησε, 1.31.3) for having gained such children as Cleobis and Biton. Cole notes that μακαρίζειν is 'a gift not bestowed without irony' and that is certainly the case here.[187] The woman who is so exceedingly proud of her sons prays for the best outcome for a human being (τὸ ἀνθρώπῳ τυχεῖν ἄριστόν ἐστι, 1.31.4), and thereby causes their death. Both she and her fellow Argives thought she was happy but they learnt the lesson that happiness can only be measured after death, not during

[184] Goff 2004: 1-3; Foxhall 2013: 142-144 on how gender roles in *polis* cult can flow against the routines of everyday life; Parker 2005: 158-9 on festivals as performance of collective identity; 2011: 240-243 on ritual as both reinforcing gender stereotypes but also offering some autonomy to women.
[185] Dewald 2011: 65 on the extraordinary public recognition from the community for [Cleobis and Biton's] exploits on behalf of their mother and the goddess, which Herodotus memorialises in his work.
[186] Chiasson 1983: 115-118; 2005; 49. Other examples of περιχαρὴς foreshadowing disaster: Harpagus, when his son is invited to court by Astyages (1.119.2); Cambyses on his accuracy with a bow which kills Prexaspes' son (3.35); Babylonians when Zophyrus leads them against the Persians (3.157.3); Oeobazus 4.84.2); Artaynte, when she receives Xerxes' gift (9.109.3).
[187] Cole 2004: 148n.9.

life. As Fehling notes, the story 'hardly accords with the positive attitude to life evinced by Tellos'.[188]

For some commentators the point is to illustrate the pessimistic wisdom of the god that death is better than life for humans (ἄμεινον εἴη ἀνθρώπῳ τεθνάναι μᾶλλον ἢ ζώειν, 1.31.3).[189] This places Herodotus in the tradition of archaic elegy, in which proverbially[190]:

> It is best of all for mortals not to be born and not to look upon the rays of the piercing sun, but once born it is best to pass the gates of Hades as quickly as possible and to lie under a large heap of earth.
>
> πάντων μὲν μὴ φῦναι ἐπιχθονίοισιν ἄριστον, μηδ' ἐσιδεῖν αὐγὰς ὀξέος ἠελίου, φύντα δ' ὅπως ὤκιστα πύλας Ἀΐδαο περῆσαι καὶ κεῖσθαι πολλὴν γῆν ἐπαμησάμενον (Theognis *Elegies* 1: 425–28)

Chiasson notes the link between maternity and mortality in archaic poetry as well as in Herodotus, and the elements of myth and initiatory ritual in this story, whereby the dedication of statues gives the young men honorary initiation into the status of adult male warriors and mitigates their mortality.[191]

However, I think this misses a significant aspect of this story, the uncomfortable intersection, at times, between religious practice and gender performance, the ambiguity at the heart of

[188] Fehling 1989: 212.
[189] Lloyd 1987: 24, 28; How and Wells 1928: 68; Harrison 2000: 35n.9; Flory 1987: 172; Fehling 1989: 211-212.
[190] Harrison 2000: 39 cites the 'death is better than life' proverb as one Herodotus and his contemporaries took for granted.
[191] Chiasson 2005: 41-64.

divine-mortal reciprocity.[192] In the case of Hera's priestess, her power lies in her religious function, which enables her to make a request of the god, but the outcome for her as a mother is unhappy. It contradicts the message in the story of Tellus, that happiness lies in having children and grandchildren who survive. Croesus himself suffers the loss of his son Atys, the effect of which Herodotus describes as devastating (τῷ θανάτῳ τοῦ παιδὸς συντεταραγμένος, 1.44.1) and, as Lateiner points out, childlessness in Greek society was seen as punishment because it meant the end of the *oikos*.[193] I explore this theme in greater length in chapter 4 when I consider those who put the *oikos*, and therefore their power and status as men, as well as rulers, at risk. The happiness of this woman as the boys' mother was short-lived and her story, like that of Croesus, illustrates Solon's observation that one must look at the outcome of events before passing judgment on them (σκοπέειν δὲ χρὴ παντὸς χρήματος τὴν τελευτὴν κῇ ἀποβήσεται, 1.32.9).

Herodotus, therefore, follows his description of Solon as lawgiver (1.29) with his role as storyteller, someone who understands that living with the rules of the gods means accepting that they sometimes punish those, like the mother in this story, and subsequently Croesus, who are over-confident in their dealings with the gods. In the case of Lycurgus, the interaction of divine and human agency is more directly signposted by Herodotus.

3.2 Lycurgus

> Some say that the Pythia also declared to him the order that now exists at Sparta, but the Lacedaemonians themselves say that Lycurgus brought it from Crete when he was guardian of his nephew Leobotes, the Spartan king. Once he became guardian,

[192] Chiasson 1983: 116 'if we fail to recognise her grief, we rob the story of its emotional complexity and irony'.
[193] Lateiner 1989: 142-4.

> he changed all the rules and made sure that no one transgressed the new ones. Lycurgus afterwards established their affairs of war (the sworn companies, the division of thirty, and the communal messes), and beside these the ephors and the gerontes.
>
> οἳ μὲν δή τινες πρὸς τούτοισι λέγουσι καὶ φράσαι αὐτῷ τὴν Πυθίην τὸν νῦν κατεστεῶτα κόσμον Σπαρτιήτῃσι. ὡς δ᾽ αὐτοὶ Λακεδαιμόνιοι λέγουσι, Λυκοῦργον ἐπιτροπεύσαντα Λεωβώτεω, ἀδελφιδέου μὲν ἑωυτοῦ βασιλεύοντος δὲ Σπαρτιητέων, ἐκ Κρήτης ἀγαγέσθαι ταῦτα. ὡς γὰρ ἐπετρόπευσε τάχιστα, μετέστησε τὰ νόμιμα πάντα, καὶ ἐφύλαξε ταῦτα μὴ παραβαίνειν: μετὰ δὲ τὰ ἐς πόλεμον ἔχοντα, ἐνωμοτίας καὶ τριηκάδας καὶ συσσίτια, πρός τε τούτοισι τοὺς ἐφόρους καὶ γέροντας ἔστησε Λυκοῦργος. (1.65.4-5)

Herodotus, therefore, gives two versions of the story of Lycurgus as lawgiver, one based on divine revelation, one on human agency. The Pythia has already blurred the boundary between god and mortal by questioning whether Lycurgus is man or god but on balance, favouring the latter (δίζω ἤ σε θεὸν μαντεύσομαι ἢ ἄνθρωπον. ἀλλ᾽ ἔτι καὶ μᾶλλον θεὸν ἔλπομαι, ὦ Λυκόοργε, 1.65.3). Herodotus himself does not commit to either version of the story. The latter version however historicises the process, in that firstly, Lycurgus changes the rules, later (μετὰ δὲ) he creates the institutions. Willey glosses κόσμος and τὰ νόμιμα πάντα as ‘constitution’ but this is to miss the development in this story.[194] Herodotus shows the creation of new rules with sanctions attached to be a process which precedes the creation of institutions. These, in gender terms, embed male authority in the Spartan *polis*, creating rules

[194] Willey 2016: 185.

which define who is included and excluded and making war and politics institutionally gendered.

The creation of new rules, therefore, the rule of law introduced by Lycurgus, is separate from the creation of gendered institutions, making gender less significant as a factor in the wider story of how Lycurgus brought 'good rule' to the Spartans, who had formerly had the worst rules (κακονομώτατοι ἦσαν ... μετέβαλον δὲ ὧδε ἐς εὐνομίην, 1.65.2). He is thereby credited with introducing a form of the rule of law to Sparta, based on *eunomia*, which is of significance to the wider community, as well as institutionalised gender segregation in matters of war and politics. In later chapters, I will argue that, in Herodotus' stories on Spartans 'living with the rules', the institutional aspect is less important than the interaction of human and divine authority, expressed through oaths, the Pythia and supplication. Moreover, Spartan rules are not always coercive, orders backed up by threats, but have to be negotiated, as in other Greek *poleis*, and the performance of those rules assessed by the wider Spartiate community. Negotiating with the rules of tyranny is a different proposition as I now consider, though, as with Lycurgus and the Spartans, the absence of rules may need to be addressed before institutions are created.

3.3 Deioces

> He was a clever man ... who desired to be tyrant ... and he did, in fact practise with integrity and fairness, because he desired power. Already a man of some standing in his own village, he began to practise justice more enthusiastically and zealously than ever, and he did this even though there was much lawlessness throughout the land of Media, and he knew that injustice is the enemy of justice. Then the Medes of the same village, seeing his behaviour, chose him to be their judge

> σοφὸς ... ἐρασθεὶς τυραννίδος ... ὁ δὲ δή, οἷα μνώμενος ἀρχήν, ἰθύς τε καὶ δίκαιος ἦν ... ἐν τῇ ἑωυτοῦ ἐὼν καὶ πρότερον δόκιμος καὶ μᾶλλόν τι καὶ προθυμότερον δικαιοσύνην ἐπιθέμενος ἤσκεε: καὶ ταῦτα μέντοι ἐούσης ἀνομίης πολλῆς ἀνὰ πᾶσαν τὴν Μηδικὴν ἐποίεε, ἐπιστάμενος ὅτι τῷ δικαίῳ τὸ ἄδικον πολέμιον ἐστί. οἱ δ᾽ ἐκ τῆς αὐτῆς κώμης Μῆδοι ὁρῶντες αὐτοῦ τοὺς τρόπους δικαστήν μιν ἑωυτῶν αἱρέοντο (1.96)[195]

For Thomas, there are echoes in the Deioces story of similar ones about Greek tyrants, encouraging an audience to reflect on ideas of justice, law and state formation.[196] The prevalence of words with a *dikē* root in this story has been noted and the role of Deioces in the process of synoecism, changing Media from a predominantly rural society to a centralised bureaucracy, controlled from Ecbatana.[197] Asheri reads the story as 'a parable on the subject of tyranny as seen by an intellectual Greek' achieved through gaining a reputation as a judge and law enforcer.[198] Moreover, it is clear that Deioces becomes an increasingly harsh and remote protector of law and order who hides from view but has 'eyes and ears' across Media. This transformation is reflected in the changing descriptions of Deioces; the Medes agree to make him king (βασιλέα σφίσι εἶναι, 1.98.1) but once he is in power he strengthens his tyranny (ἐκράτυνε ἑωυτὸν τῇ τυραννίδι, 1.100.1).[199] Harris argues that the tyranny of Deioces was the antithesis of the rule of law in Greek eyes, since he promoted law and order as a means to gain power, rather than an end in itself, whereas for Solon the rule of law was an

[195] The sexual metaphor in ἐρασθεὶς and μνώμενος emphasises the strength of Deioces' desire to be tyrant.
[196] Thomas 2012: 248-253.
[197] Lateiner 1989: 171; Asheri 2007: 149; Thomas 2012: 244; Dewald 1998: 605 in notes to Waterfield translation.
[198] Asheri 2007: 149, for Deioces personifying the fair judge, promoter of buildings, unifier of nation, all *erga* worth commemorating.
[199] Forms of *basileus* are used five times in 1.98, perhaps to emphasise that the Medes think they are getting a king, not a tyrant.

alternative to the rule of man.[200] Is tyranny, therefore, always incompatible with the rule of law?

This story provides a model of how the *nomos* of coercive tyranny is created, but I argue that Deioces, in some ways, is a foil to Astyages and model for the young Cyrus, and that, whereas the straightforward narrative structure of the Deioces story suits its purpose as a medium for Herodotus' audience to think about political theory, the mythical and dramatic nature of the story of Astyages and Cyrus invites us to think about the 'unwritten laws' of family and the *oikos* community, as I explore in chapter 4. The story of Deioces is told as part of the story of Cyrus' rise to power (told in ring composition from 1.95-1.130) and, in many ways, both explains some of the difficulties inherent in the *nomos* of tyranny (reliance on a hierarchy of command, for instance) as evident in the rule of Astyages, but also highlights the individual nature of Astyages' offence against *nomos*; whilst both Median kings are harsh, Astyages is also cruel and ineffective and destroys his own *oikos*.[201]

Deioces sets up a relationship with the Medians based on his role as the embodiment of justice and creator of rules to combat *anomia,* but in pursuit of his desire to be tyrant. In this respect he is like Peisistratus, who convinces the Athenians to reinstate him as tyrant by dressing up Phye as the goddess Athena (1.60), thereby using an element of guile to achieve his goal. The Medians prove themselves capable of resisting an external power, the Assyrians. Having freed themselves from external rule (ἐόντων δὲ αὐτονόμων πάντων, 1.96.1) why, then, do they return to the rule of tyranny internally (ὧδε αὖτις ἐς τυραννίδα περιῆλθον,

[200] Harris 2006: 296-300.
[201] Asheri 2007: 147: Median kings foreshadow the great Persian monarchs from Cyrus to Xerxes. See also Munson 2013b: 324 for link between Median and Persian narratives in the *Histories*.

1.96.1)?[202] Herodotus presents this as the calculated outcome of Deioces. It is notable that there is no compulsion here; the Medians choose Deioces to be their judge, and eventually will agree only to his judgments because he alone was fair (ὡς Δηιόκης εἴη ἀνὴρ μοῦνος κατὰ τὸ ὀρθὸν δικάζων, 1.96.3). However, it is very clear from Herodotus' narrative that Deioces skilfully manipulates his position to achieve his ends. To that extent, he shows the 'uncommon skill and success as a political operator' that, in Anderson's view, distinguishes *turannoi* from other oligarchic leaders, winning the support of the community and thus a degree of legitimacy.[203] The state of *anomia* that Herodotus attributes to the Median villages is not anarchy, but an unfair and ineffective system of justice, which does not command the respect of the community. There are *nomoi* but they are not enforced adequately, as is highlighted when Deioces refuses to continue his *pro bono* judgments:

> This caused robbery and lawlessness to return to the villages on a greater scale than before and, gathering together, the Medes had a debate about their present situation, and considered what action to take (here, I suppose, the main speakers were Deioces' friends) ... 'Let's make one of us king. Then the country will be well governed and we can return to work and not lose our homes due to lawlessness'.
>
> ἐούσης ὦν ἁρπαγῆς καὶ ἀνομίης ἔτι πολλῷ μᾶλλον ἀνὰ τὰς κώμας ἢ πρότερον ἦν συνελέχθησαν οἱ Μῆδοι ἐς τὠυτὸ καὶ ἐδίδοσαν σφίσι λόγον, λέγοντες περὶ τῶν κατηκόντων. ὡς δ' ἐγὼ δοκέω, μάλιστα ἔλεγον οἱ τοῦ Δηιόκεω φίλοι ... φέρε στήσωμεν ἡμέων αὐτῶν βασιλέα: καὶ οὕτω ἥ τε χωρῇ εὐνομήσεται καὶ αὐτοὶ πρὸς ἔργα τρεψόμεθα, οὐδὲ ὑπ' ἀνομίης ἀνάστατοι ἐσόμεθα, 1.97.2-3)

[202] This tension between freedom *from* and freedom *to* is explored by Baragwanath 2008: 192-202.
[203] Anderson 2005: 202; 2009: 2.

This passage illustrates that the Medians have a forum for debate and decision-making; they meet together and make speeches and persuade themselves to be governed by a king (πείθουσι ἑωυτοὺς βασιλεύεσθαι, 1.97.3), albeit following a debate that was dominated by Deioces' friends, in Herodotus' opinion as narrator (ὡς δ' ἐγὼ δοκέω, 1.97.2). Part of the Medians' motivation is a wish for stability, so that they can work and not be driven from their homes through lawlessness (ὑπ' ἀνομίης ἀνάστατοι); like the Spartans they seek *eunomia*. The price for this is submission to a harsh regime in that he forces the Medians to build him one city (τοὺς Μήδους ἠνάγκασε ἓν πόλισμα ποιήσασθαι, 1.98.3).[204] He then creates the institutions which underpin his tyranny:

> When he had made these arrangements and strengthened his position as tyrant, he was harsh in the protection of justice. People would write down their pleas and send them in to him; then he would pass judgment on what was brought to him and send his decisions out. This was his manner of deciding legal cases, and he had other methods too, for when he heard that a man had committed an offence, he would send for him and inflict on him the punishment the crime deserved. And he had spies and eavesdroppers everywhere in his kingdom.
>
> ἐπείτε δὲ ταῦτα διεκόσμησε καὶ ἐκράτυνε ἑωυτὸν τῇ τυραννίδι, ἦν τὸ δίκαιον φυλάσσων χαλεπός: καὶ τάς τε δίκας γράφοντες ἔσω παρ' ἐκεῖνον ἐσπέμπεσκον, καὶ ἐκεῖνος διακρίνων τὰς ἐσφερομένας ἐκπέμπεσκε. ταῦτα μὲν κατὰ τὰς δίκας ἐποίεε, τάδε δὲ ἄλλα ἐκεκοσμέατὸ οἱ: εἴ τινα πυνθάνοιτο ὑβρίζοντα, τοῦτον ὅκως μεταπέμψαιτο κατ' ἀξίην ἑκάστου ἀδικήματος ἐδικαίευ, καὶ οἱ κατάσκοποί τε καὶ κατήκοοι ἦσαν ἀνὰ πᾶσαν τὴν χώρην τῆς ἦρχε. (1.100)

[204] Munson 2001a: 36 on *anankē* as external coercive force, used also on the slave Mitradates (1.112.2; 1.116.4-5) in a later scene.

The language has changed from choice, debate and face to face justice to coercion, written judgments and a network of informants. As Baragwanath points out, the walls of Ecbatana symbolise and effect the transformation of Media from the autonomous rule of villages to the centralised tyranny of Deioces, which creates an institution and legal system based on coercion.[205] Deioces also isolates himself; 'he was the first to make rules that no-one was to enter into the king's presence, but all business was to be conducted through messengers and the king was to be seen by no one' (Δηιόκης πρῶτος ἐστὶ ὁ καταστησάμενος, μήτε ἐσιέναι παρὰ βασιλέα μηδένα, δι᾽ ἀγγέλων δὲ πάντα χρᾶσθαι, ὁρᾶσθαι τε βασιλέα ὑπὸ μηδενός, 1.99.1).[206]

However, there are aspects of the story which distinguish it from the story of Deioces' great grandson Astyages. Whilst Deioces is harsh, his rule is not arbitrary and he does nothing either to threaten the integrity of his *oikos* or to risk foreign campaigns (unlike his son, who died, with most of his troops, at the hands of the Assyrians, 1.102.2). I suggest, therefore, that whilst the story is clearly part of Herodotus' explanation of why things happen, and how the political *nomos* of tyranny can arise, Herodotus also contrasts Deioces with Astyages, who invites retribution through acts which are egregious and unlawful (*anoma*). In the story, Deioces shows some skill in his pursuit of power, playing the same game of alliance negotiation and image-marketing as everyone else.[207] Herodotus shows us a community which chooses tyranny, through a process that includes debate and consideration of options. As Brock and Hodkinson point out, even in those communities without democratic processes

[205] Baragwanath 2008: 144-5. Asheri 2007: 150-1.
[206] Asheri 2007: 150 - Deioces creates a bureaucracy and court ceremonies modelled on Assyria. Bakker 2007: 54-55 on messages delivered by intermediaries (transported speeches, in his terminology) as illustrating both isolation and supremacy of Persian kings, with examples.
[207] Anderson 2005: 192.

rulers need to interact with the community; 'issues of power are often balanced by the need to create a general will to action and consensus within the community'.[208] Deioces imposes harsh *nomoi*, as tyrant, but, initially at least, with the consent of the Medes and the support of his friends. This story illustrates the interaction of ruler and community, whereby *nomos* is increasingly coercive, but is the price the community pays for not being driven from their homes through lawlessness. Deioces creates a rule of law in the 'thin' sense of rules which not only coerce the subject but also facilitate community life. Herodotus, however, also signposts the lack of accountability of king to subject, the use of spies, and the lack of a proper system of due process, which can become markers of the absence of the rule of law in the hands of other tyrants. In the next story, by contrast, women create a *nomos* within the *oikos*, rather than issuing orders backed up by threats, which they lack the power to do.

3.4 The Carian women

> [The Athenians] did not bring wives with them on their voyage of colonisation, but married some Carian women, having murdered their fathers. It is because of this murder that the women made it a rule (a rule they bound themselves to by oaths and passed on from mother to daughter) never to share a meal with their husbands and never to call out to them by name – these were, after all, the men who had gained them as their wives by murdering their fathers, husbands and children
>
> οὗτοι δὲ οὐ γυναῖκας ἠγάγοντο ἐς τὴν ἀποικίην ἀλλὰ Καείρας ἔσχον, τῶν ἐφόνευσαν τοὺς γονέας. διὰ τοῦτον δὲ τὸν φόνον αἱ γυναῖκες αὗται νόμον θέμεναι σφίσι αὐτῇσι ὅρκους ἐπήλασαν καὶ παρέδοσαν τῇσι θυγατράσι, μή κοτε ὁμοσιτῆσαι τοῖσι ἀνδράσι μηδὲ οὐνόματι βῶσαι τὸν ἑωυτῆς ἄνδρα, τοῦδε εἵνεκα ὅτι ἐφόνευσαν σφέων τοὺς

[208] Brock and Hodkinson 2000: 10-11.

πατέρας καὶ ἄνδρας καὶ παῖδας καὶ ἔπειτα ταῦτα ποιήσαντες αὐτῇσι συνοίκεον (1.146.2-3)

In this story, the Carian women make a *nomos* which regulates their social intercourse with their Athenian husbands, as a consequence of the murder of their own kin. I argue that this can be read both as an act of resistance, and in the longer term, an act of memorialising that resistance, which Herodotus himself perpetuates with his work. This resistance is to the rule of law as oppressor, a coercive power which forces women into marriage with the men who killed their fathers. The Athenians who colonise Caria assume a right analogous to the right in war, to capture these women as if they were spoils of war.[209] At a talk at the University of Birmingham on 7th March 2018, Irad Malkin argued that the usual practice was for Greek colonists to take their wives with them, and the Carian example was, therefore, unusual.[210] This would be an added reason for Herodotus to find this story interesting, as well as the undoubtedly unusual aspect of women as lawmakers.

Asheri interprets this story as a rational aetiology for the widespread custom of sex-segregation at meals, drawing parallels with the Cretan and Spartan syssitia, the Greek symposium and the banquets of the Macedonians in the *Histories* (5.18.3), and interprets the custom of not calling a husband by name as probably a Carian tradition which outlived Hellenisation of the city.[211] He comments that the custom introduced by the Carian women is seen by Herodotus as strange or exceptional, citing Dickey, whose general study of Greek

[209] Harris 2013: 7 'The universal rule among the Greeks was that persons captured in battle belonged to the victors by right of conquest'; Lanni 2008: 480-1 on lack of protection for non-combatants or civilians in Greek law of war.
[210] See also Asheri 2007: 177 for examples of entire families migrating abroad and examples in Ionia of peaceful cohabitation and/or expulsion.
[211] Asheri 2007: 177.

forms of address distinguishes between women for whom the appropriate form of address for a respectable, unrelated woman is 'γύναι', that is, not by her first or last name, and men, where the variation between first name and 'ἄνερ' is 'either random or dependent on factors which cannot be identified'. However, she also points out that the lexical meaning of γῠνή as 'woman' or 'wife' does not either emphasise the connection between husband and wife or signal affection or respect.[212] What is remarkable, and this may be the reason why Herodotus was attracted to this story, is that women are the agents, setting arrangements within the *oikos*; they both exclude men from social space, rather than being excluded from it, and they register their protest through silence, not speech, by not naming the men. Dewald argues that Herodotus tells this story to mock Ionian pretensions, because, whilst they pride themselves on being true-blooded Athenians, in fact they are half Carian.[213] It could equally suggest that Herodotus is mocking not only the Athenian autochthony myth, but also male control of *oikos* space through sex segregation at the Athenian symposium. In his story not only was sex segregation at meals introduced by Carians, it was also introduced by women.

There is another aspect to this story, however, which has received less attention, namely the internal story, about an act of resistance whereby women reject a social expectation of reciprocity, which becomes an act of cultural memorialising, passed by mothers to their daughters, and preserving the memory of the murder of husbands, fathers and children by Athenians when they colonised Miletus.[214] Otten, who has interviewed some of the Yezidi

[212] Dickey 1996: 224-5 on this passage with footnote; 224-5 on gender distinctions in forms of address; 86 on lexical meaning of γῠνή. See also Schaps 1977: 323-330 on appropriate forms of address for women in classical Greece; Larsen 2006: 225-244 on not naming women in Herodotus being a mark of respect.
[213] Dewald 2013b: 158-159; Thomas 2013: 355 makes the same point.
[214] Assman 2000: 6-7 on the task of memory being to transmit cultural identity; 29 'Cultural memory is complex, pluralistic and labyrinthine; it encompasses a quantity of bonding memories and group identities that differ in time and place and draws its dynamism from these tensions and contradictions'

women abducted and raped by men from ISIS, writes that they deal with the trauma of their experiences through telling stories of their captivity and resistance, in order to reassert their identity as Yezidi women and to reject the orientalist stereotype of the passive victim, subject to a form of reductive exoticism by the media as 'sex slaves'.[215] They know their ancestors faced the same sort of persecution in the past and storytelling is a means of promoting survival and resistance, though Otten acknowledges this is not always successful.[216] The story of the Carian women, therefore, I argue, has a universal quality which transcends its temporal aspect, and links it to similar stories such as those of the Yezidi women. Lateiner's reading of the story of the Carian women is that 'this report of female determination feeds a Hellenic taste for scanning and weighing exotic otherness in race and gender'.[217] Through creating a *nomos*, though, and securing it with oaths, suggesting an element of compulsion, I suggest that the Carian women, like the Yezidi women, reject any narrative of exotic otherness, making *nomos* in a gender-appropriate space, the *oikos*, and securing it in an appropriate way, by oaths.

For Assman, one of the functions of ritual is to keep alive a memory that is not kept alive in everyday life.[218] Certainly, the use of oaths to bind women to the *nomos* they introduce could suggest a ritual element to their practice as well as the need to make the rule obligatory. However, the Carian women also preserve and reinforce memory in everyday activities, not sharing meals with their husbands or calling them by name, which make this a *nomos* which

[215] I adopt Rowan Williams' definition of orientalism as 'the reductive exoticising of an alien society' (*New Statesman* May 2019: 39)
[216] Otten 2017: 4, 8-9 'storytelling is a means of promoting survival and resistance in the face of captivity'. 'Sex slaves' as reported by BBC news, 29/08/17, about Yezidi women.
[217] Lateiner 2012: 160.
[218] Assman 2000: 10, 16. Ritual stabilises a 'collective identity through a process of symbolic dramatisation'. Rood 2006: 292-3 on what he terms social memory, how people interpret their own customs in the light of past experience.

concerns the performance of gender as well as a ritual activity. To adapt Jonathan Hall's observation on ethnic identity,[219] if gender is continuously constructed through practice and reinforced through interaction with others, then it is an act of rebellion for the Carian women to refuse to name their husbands. Calame argues that the significance of naming the gods is that it enables us to identify them, it gives them qualities based on function.[220] By analogy, the Carian women deny their husbands both an identity and a function. By imposing sex segregation at meals, moreover, these women are shown to manage both time and space within the *oikos*, rather than being excluded from, for example, the Athenian symposium. However, paradoxically, they also assert the Greekness they have acquired through marriage, since it was the non-Greeks in the *Histories* whose custom was to share meals with their wives.[221]

For me, the significance of this story is that women assume the power that is available to them to create a *nomos* that relates to everyday life, but which they intend, through transmission to their daughters, to be a means of passing on the memory of their oppression, making the act of lawmaking an act of resistance. They create *nomos* within the *oikos*, a space which includes them, rather than through the formal apparatus of the male assembly, which excludes them. What constitutes female authority within the *oikos*? In Pomeroy's discussion of the Athenian *oikos*, she links women's lack of legal competence to their lack of power in the wider sphere. The history of the Greek family, she writes, 'must be largely the history of an institution dominated by men'.[222] Taylor, however, argues that 'ideological notions of separation quickly break down when confronted with lived experience' and suggests we should consider what

[219] Hall 2015: 29.
[220] Calame 2011: 337 on ὀνομάζειν as word used by Herodotus to identify as well as name a god, to give him qualities based on function.
[221] For example, Caunians (1.172); Persians (5.18).
[222] Pomeroy 1997: 16.

women are allowed to do rather than what they are excluded from.[223] Patterson, also, considers women within the *oikos* as participants, not just objects of the male gaze, whose role is often to mediate between the public and the private realm.[224]

Herodotus' story, however, goes further than giving women agency as mediators; they make the rules of social intercourse within the *oikos*, suggesting that it is a mistake to focus on legal capacity in the narrow sense of participation in legal institutions. They have authority as mothers which enables them not only to control their daughters, and enforce that control through oaths, but also to limit their own interaction with their husbands. They create a precedent, which unquestionably has a prescriptive aspect, and is intended to bind daughters as well as husbands, thus conforming to Hart's concept of law as including social norms which are accepted as valid and binding by those amongst whom they prevail.

It is important, nevertheless, to emphasise the unusual aspect of this story. Most women in the *Histories* do not find a remedy for abduction and rape through creating or enforcing *nomos*. At the start of the *Histories*, Herodotus relates the stories of four mythical women. In his account they have no voice; they are akin to property, to be seized and exchanged. Herodotus makes Alexander's motivation explicit; he wanted a Greek wife and he thought he would get away with stealing one (1.3.1) because no consequences had followed the previous abduction of Medea by the Greeks. The language in this section (1.1-5) is significant. Herodotus uses variants of ἁρπάζω 16 times,[225] emphasising the seizure or theft of women. The king of Colchis demands payment for his daughter's abduction and her return (1.2.3), the Greeks

[223] Taylor 2015: 35-53. See also Blok 2013: 163-171; Georgoudi 2015: 200-210.
[224] Patterson 1998: 227-9.
[225] Given as a verb 5 times in the active, 4 in the passive; as a noun 7 times.

demand the return of Helen and a compensation payment (1.3.2), and Herodotus uses words which suggest justice, compensation and reciprocity (αἰτέειν τε δίκας ... ἀπαιτέειν, 1.2.3), but for men, not women. The Corinthian women who are stripped naked by Periander (5.92) have no legal remedy, nor do the Phocian women gang-raped until they died (γυναῖκας τινὰς διέφθειραν μισγόμενοι ὑπὸ πλήθεος, 8.33). Greeks receive the spoils of war after their victory over the Persians, which include women (τὰς παλλακὰς τῶν Περσέων καὶ τὸν χρυσὸν καὶ ἄργυρον καὶ ἄλλα χρήματα τε καὶ ὑποζύγια, 9.81) and Masistes' wife is only protected from rape because of her husband's relationship to Xerxes (9.108.1). As with the stories of remarkable individual women, such as Candaules' wife or Artemisia, the story of the Carian women is an interesting and salutary counterpoint to an essentialist ideology which devalues the female, but it is unusual. For me, the significance is that women are shown to create *nomos* and make it effective and binding outside structures of patriarchal authority.

Conclusion

The story of the Carian women shows that Herodotus' conception of *nomos* is wide enough to encompass the regulation of family and social life, which feminist legal theory has highlighted as missing from much modern legal discourse. The story also illustrates Hart's argument that rules have an 'internal' aspect which coerces those subject to them, and supports Pospíčil's concept of law whereby women here are the legal authority within a group, who have power to enforce an imperative decision on their daughters, supported by a sanction in the form of oaths, as a response to a dispute with the men who have taken them legitimately (according to the rules of war) but against their will. Moreover, they intend their decision to bind daughters in the future. I will explore this in more detail throughout this

thesis, when I consider the performance of gender by women as well as men, in the *oikos* and in public space.

Solon, Lycurgus and Deioces are shown to be very different lawgivers. Solon is someone who speaks truth to power, and understands the interaction of gods and men to be integral to *nomos*. I will apply this to those in the *Histories* who forget this crucial aspect of the rule of law. Lycurgus shows a different relationship to the divine, which is ambiguous since even a god (Apollo) cannot be sure whether he is a god or human. However, through setting up Spartan institutions, he establishes a legal system which I will test as 'law in action' in chapter 4. Deioces, meanwhile sets up the *nomos* of tyranny. These are the rules therefore, which individuals and groups have to live with, but everyone, including the rulers themselves have to live with divine rules, which are secured through oaths, negotiated through interpreting the Pythia, and should be respected as imposing sanctions and punishments on those who violate the wider rule of law.

I have identified the rule of law in both its 'thin' and 'thick' sense. The Deioces story shows that law has to be implemented to avoid *anomia*, but he also introduces the coercive, repressive, aspects of tyranny. Another tyrant, Croesus has to be educated by Solon to 'look to the end', to acknowledge limits on tyranny whereby Herodotus gives us an ideal of the rule of law, its 'thick' aspect, which has a 'normative role for the community as a whole'[226] and also binds kings as well as slaves.

[226] Willey 2016: 200.

In this chapter I have concentrated on those who make law, addressing the role of the gods, and human lawmakers, including the Carian women. In my next chapter, I use a case study about the foundation of religious institutions, the oracles at Dodona and Siwa, to illustrate Herodotus' legal method, integral to his concept of the rule of law, and to consider what *nomos* is for, what legal procedures, institutional or otherwise, uphold it and how *nomos* is communicated, debated and implemented.

CHAPTER 2: HERODOTUS' JURIDICAL METHODOLOGY: LAW, GENDER, AND SPEECH

Introduction

In this chapter, I argue that Herodotus' concept of the rule of law is reflected in his own methodology. He emphasises the need to evaluate source material, just as a lawyer has to assess evidence, to interpret those sources critically and to come to a judgment based on a balance of factors. In his work of *historiē*, Herodotus interrogates the past, seeking evidence for what happened, why it happened, who was responsible, and whose fault it was, for example, that the Greeks and non-Greeks went to war (δι᾽ ἣν αἰτίην ἐπολέμησαν ἀλλήλοισι, *Proem*). From the start of the *Histories*, therefore, Herodotus is addressing issues of causation, a key aspect of both civil and criminal proceedings in modern law. He assembles stories from his informants, often giving us more than one version; sometimes he assesses the evidence and favours one account, sometimes he distances himself from both stories. Both approaches are assessments on his part of credibility.

In any legal investigation there will be at least two accounts which need to be evaluated. At the start of the *Histories*, Herodotus reports the Persian belief that no women would be abducted unwillingly (1.4.2) and the Phoenician account which holds Io complicit in her own abduction (1.5.2), but declares 'I will not come down on one side or another' (ἐγὼ δὲ περὶ μὲν τούτων οὐκ ἔρχομαι ἐρέων ὡς οὕτως ἢ ἄλλως κως ταῦτα ἐγένετο, 1.5.3). He thus establishes his critical credentials at the start of the *Histories*, seeking out alternate sources and not relying on a 'single propagandistic account'.[227] The assessment of evidence, the interrogation of conflicting accounts, the analysis of source material is all part of legal work, and is more

[227] Barawanath and Bakker 2012: 41; Baragwanath 2008: 2 'history is contested territory'.

complex than a binary opposition of truth and lies; it is arriving at a balanced judgment. Any trial is interpretive; it 'reconstructs a history, and marshals evidence to answer a particular question and for the purpose of a public resolution'.[228]

In this chapter, I start by using the story of the foundation of oracles at Dodona and Siwa as a case study to show how Herodotus models for us a methodology that is part inquisitorial, part adversarial, and engages with key legal skills of evidence-gathering, interpretation and judgment, but is not based on the institutions of the law courts, written statute, and forensic oratory. I use two examples from modern law, one from criminal law, one from family law, to show that law can be both punitive, invoking the rhetoric of blame, and investigatory, making a judgment on what is in the best interests of a child. Herodotus also shows us a rule of law which sometimes invokes the rhetoric of praise and blame, sometimes regulates gender performance.

I will demonstrate that, in the *Histories*, we are most likely to discover the authoritative *nomos* through speech rather than through a written statute. *Nomos*, then, has to be interpreted in the light of available evidence, and, finally, a judgment has to be made. In this chapter, therefore, I introduce the role of speech, by both men and women, in engaging with these three categories, though there is, of course, some considerable overlap. Candaules' wife for example, speaks the rule, and comes to a judgment on the basis of her interpretation of what she knows and sees. In later chapters, I will distinguish between those cases where violation of *nomos* is being punished, those where women are involved in preserving the *oikos*,

[228] Lobban 2004: 31.

regulating their community and acting as agents of social control, and those characters of both genders who are shown to confound gender expectations.

In considering Herodotus' concept of the rule of law from a gender perspective, I will show that he models for us a form of legal method in which an inquisitorial method may be more appropriate than an adversarial one, because it can highlight the gap between ideology (the official representation of gender, based on the binary opposition of male and female), and gender performance, which may subvert or manipulate that ideology. I use the following case study to show that Herodotus' legal method is both inquisitorial and adversarial, in practice. In the story of the foundation of oracles at Dodona and at Siwa in Libya, Herodotus establishes his own authority and displays his legal method, through evaluating and interpreting his sources as well as relating what they say. His informants speak but Herodotus explains their words for us. He explores the origins of the oracles and relates two traditions from which he draws his own conclusions.

1. The foundation of oracles at Dodona and Siwa

In the version told by the priests of Theban Zeus, two priestesses were abducted from Thebes by Phoenicians (δύο γυναῖκας ἱρείας ἐκ Θηβέων ἐξαχθῆναι ὑπὸ Φοινίκων, 2.54.1) and sold in Libya and Greece (2.54), where they founded oracles in those countries (2.54). Herodotus cross-examines the priests on how they could speak with such precise knowledge (εἰρομένου δέ μευ ὁκόθεν οὕτω ἀτρεκέως ἐπιστάμενοι λέγουσι, 2.54.2). The priests reply that they could not find the women but learnt about the story later on (ἀνευρεῖν μὲν σφέας οὐ δυνατοὶ γενέσθαι, πυθέσθαι δὲ ὕστερον ταῦτα περὶ αὐτέων τά περ δὴ ἔλεγον, 2.54.2). This rather undermines their credibility, as it exposes their lack of witnesses and is based on a hearsay

account. Herodotus questions the truth of the story (εἰ ἀληθέως, 2.56.1) and also corrects the vagueness of their reference to 'Phoenicians'. 'In my opinion' (δοκέει ἐμοί, 2.56.1) he says, it was the Thesprotians who brought the one priestess to Greece, who worked as a slave for them and built a shrine to Zeus under an oak tree. When she had learnt Greek (συνέλαβε τὴν Ἑλλάδα γλῶσσαν, 2.56) she founded an oracle and told how the same Phoenicians who had sold her also sold her sister in Libya.

Thus, Herodotus takes an adversarial approach to the priests. They claim to give an accurate account but have no supporting witnesses, as Herodotus' cross-examination reveals. Their account is undermined by the lack of a female voice to corroborate their story. He criticises them not only for the accuracy of their account but also for how they argue their case, giving his own interpretation. However, he also begs a question of his reader: why do you, Herodotus, think it was the Thesprotians who brought the priestess to Greece?[229] He does not tell us, making our engagement with Herodotus adversarial in turn. We ask questions of Herodotus just as he interrogates his informants.

The second version, told by the priestesses of Dodona (Δωδωναίων δὲ αἱ ἱρεῖαι ... ἔλεγον ταῦτα, 2.55.3) has a mythic quality, in which two black doves take off from Thebes in Egypt. One flew to Libya, one to Dodona, where it spoke with a human voice (φωνῇ ἀνθρωπείῃ, 2.55), telling the local people to found an oracle of Zeus there, and the dove which flew to Libya told the local people to construct the oracle of Ammon.[230] This, therefore, is 'a story within a story' which explains how myths develop, as a way of describing what cannot be

[229] Marincola 1997: 8 - Herodotus assumes an audience who ask 'How do you know?'.
[230] One of only two instances where we are told that Herodotus' informants are female. The other instance is 4.180.

understood, in this case, the enigma of a talking bird, which reflects that the women's speech was unintelligible.[231] Herodotus interrogates this account, but in an inquisitorial rather than an adversarial way. He concludes that the priestess sounded like a bird to local people because she spoke a foreign language (ἐβαρβάριζε, 2.57.2) but, once she learnt Greek, she could make herself understood by them (συνετά σφι ηὔδα, 2.57.2). By identifying her as black they signalled (σημαίνουσι) to Herodotus that she was Egyptian. Herodotus, thereby shows his interpretive skills, enabling the reader to understand the story.

However, it is clear from the wider narrative that the priestesses are the authorities for a particular kind of source material for Herodotus, information about the gods:

> However, where each of the gods came from, whether they have all existed for ever and what they each look like was not known until yesterday or the day before, so to speak ... say the priestesses at Dodona.
>
> ἔνθεν δὲ ἐγένοντο ἕκαστος τῶν θεῶν, εἴτε αἰεὶ ἦσαν πάντες, ὁκοῖοί τε τινὲς τὰ εἴδεα, οὐκ ἠπιστέατο μέχρι οὗ πρώην τε καὶ χθὲς ὡς εἰπεῖν λόγῳ ... αἱ Δωδωνίδες ἱρεῖαι λέγουσι (2.53)

When he asks them therefore about the oracle at Dodona, he is consulting them as experts on religious matters. His priority is to make sure he has the authoritative story, the one that everyone connected to the shrine agree on. He satisfies himself that this story, this foundation myth,[232] is agreed by all those connected with the shrine, including the three named priestesses (Δωδωναίων δὲ αἱ ἱρεῖαι, τῶν τῇ πρεσβυτάτῃ οὔνομα ἦν Προμένεια, τῇ δὲ μετὰ

[231] Baragwanath and Bakker 2012: 36.
[232] Hollman 2011: 96; Luraghi 2013: 111n77.

ταύτην Τιμαρέτη, τῇ δὲ νεωτάτῃ Νικάνδρη, 2.55.3). By naming the three women, moreover, he, unlike the priests, produces his witnesses and confirms both his and their authority, as well as showing that he has the skill to read signs. In his response to this version, Herodotus again shows how such a story should be interpreted, through an argument on probability. It is likely (οἰκὸς, 2.56.2), he says, that an abducted priestess who becomes a slave would remain loyal to the worship of Zeus. Once she learnt Greek, she could found an oracle and relate what had happened to her sister. When he comes, therefore, to rationalise the myth he is not criticising his informants but enabling his audience to understand the story. What is common to both versions is a narrative in which an abducted and enslaved woman has a significant role in transmitting religious belief and practice from one culture to another. She becomes an agent of change through learning and speaking Greek, which enables her to found an oracle, and which Herodotus carefully interprets for his audience in human, not divine, terms.

In this way, Herodotus models for us an approach to understanding and interpreting his sources, which is both inquisitorial and adversarial, depending on his informants, and engages with probability not certainty. How valid is it, though, to express this as a legal methodology?

2. The model of judicial arbitration

Munson uses the word 'juridical' (of or pertaining to law or legal proceedings)[233] to describe Herodotus' inquiry into causation, who is *aitios*.[234] She emphasises his role as investigator, collecting evidence from eye witness accounts and verbal testimonies, but applying a critical filter in that, whilst sources needed to be heard, they might not be reliable, as he tells us, in his role as narrator: 'I have an obligation to record what my sources tell me but certainly no

[233] Definition of 'juridical' in *The Shorter Oxford English Dictionary* 1983.
[234] Munson 2001b: 7-8. *LSJ* gives the double meaning of αἴτιος as culpable, and responsible.

obligation to believe them; this statement holds for my entire work' (ἐγὼ δὲ ὀφείλω λέγειν τὰ λεγόμενα, πείθεσθαί γε μὲν οὐ παντάπασιν ὀφείλω, καί μοι τοῦτο τὸ ἔπος ἐχέτω ἐς πάντα λόγον, 7.152.3).

Whilst Munson, therefore, privileges that aspect of law which is concerned with gathering and interpreting evidence, Immerwahr reads 'the judicial interrogation of witnesses' as a metaphor for Herodotus' historical method, based on his observations, investigations and critical judgment,[235] whereas Nagy argues that the *Histories* is a 'speech-act of authority', whose *historiē* is in the epic tradition of both the *Iliad*, in that both texts raise the issue of fault (*Proem*; *Iliad* 1.8), and the *Odyssey* in that Herodotus, like Odysseus, is on a quest.[236] Nagy also draws parallels between Herodotus as narrator of the *Histories*, and the *histor* in Homer and Hesiod, who has authority derived from the gods to resolve conflicts and decide on who is guilty.[237] Both Munson and Nagy express Herodotus' methodology in terms of judicial arbitration. Nagy argues that Herodotus is modelling the process of mediating the ongoing conflict between Athens and Sparta. In a wider sense, argues Munson, he is acting as arbiter for his audience's differences, through instructing them in what is relevant and fair, showing the importance of negotiation and arbitration, and the validity of different points of view.[238]

[235] Immerwahr 2013: 190; Christ 2013: 212-250 on Herodotus as inquirer and investigator.
[236] Nagy 1990: 227-237, 248. Other scholars who draw parallels between Homeric and Herodotean methodology: Marincola 1997: 1-6; 2013: 109-132 on Herodotus' Odyssean persona. Moles 1993: 96 on Herodotus 'as alter ego of Odysseus: traveller/spinner of tales, dispassionate observer and judge'. Renehan 2001: 174 on the *Histories* as a prose epic; Baragwanath, 2012: 296; de Jong, 2012: 254-259 on Herodotus adopting and adapting Homeric narrative techniques; Barker 2009; 23 on Herodotus' open narrative texture, an 'Odyssean strategy to gain authority for his enquiry'. Ancient commentators Longinus called Herodotus 'most Homeric' (Ὁμηρικώτατος, 13.3) and Dionysius of Halicarnassus, a 'follower of Homer' (Ὁμήρου ζηλωτής, *Pomp*. 3.11).
[237] Nagy 1990: 258.
[238] Nagy 1990: 303-321. Munson 2001b: 269.

This model of Herodotus as arbiter certainly reflects that aspect of his legal method which appraises others' *nomoi*, appreciates difference, and shows on a number of occasions that disputes are resolved through negotiation and compromise. I follow Hart in distinguishing between the 'external' and 'internal' aspect of rules.[239] Herodotus gives us the 'external' view as an observer, or inquirer, who describes and evaluates the rules that those he is investigating accept as 'internal' rules.[240] He often uses comparative or cross-cultural references, to interpret *nomoi* for himself and his audience. Thus, Lydian customs are like those of the Greeks, except that they prostitute their daughters (Λυδοὶ δὲ νόμοισι μὲν παραπλησίοισι χρέωνται καὶ Ἕλληνές, χωρὶς ἢ ὅτι τὰ θήλεα τέκνα καταπορνεύουσι, 1.94.1); the Caunians, by contrast, differ from the Carians and the rest of the world in their rules (νόμοισι δὲ χρέωνται κεχωρισμένοισι πολλὸν τῶν τε ἄλλων ἀνθρώπων καὶ Καρῶν, 1.171.1). The Lycians have some Cretan, some Carian *nomoi*, but their distinctive practice is matrilinear succession (1.173.4). The Massagetae, though monogamous, make their wives available for sexual intercourse with other men (1.216.1). Often, the rule relates to a way of life, so the Egyptian marsh dwellers live together in couples, as in Greece (2.92.1). Herodotus' interest in *thōmata* helps to explain in part why he signposts the unusual aspect of gender rules which relate to sexual or social practices, but he also uses a comparative methodology to enable his audience to understand and interpret the rules and, by contrasting some practices but drawing parallels with others, he shows 'the intrinsic hybridity of culture and identity'.[241] Herodotus contrasts Hellenic and Egyptian practices but also draws parallels between their rites, gods and mythology.[242] As I identified in the story of the foundation of the oracles, Herodotus assumes

[239] Hart 1961: 86-88.
[240] Hart 1961: 99.
[241] Skinner 2012: 19 for quotation, 25, 82, 255-6.
[242] Gruen 2011: 39, 353.

a role as interpreter for his audience of those many stories in the *Histories* of cultural appropriation, assimilation, adaption or conflict.

Herodotus, however, also subjects *nomos* to critical evaluation, both praise and blame. He praises the Persian rule that a boy lives in an exclusively female household until he is five years old (πρὶν δὲ ἢ πενταέτης γένηται, οὐκ ἀπικνέεται ἐς ὄψιν τῷ πατρί, ἀλλὰ παρὰ τῇσι γυναιξὶ δίαιταν ἔχει ... αἰνέω μέν νυν τόνδε τὸν νόμον, 1.136.2-1.137.1), he regards Amasis' rule as faultless (ἐόντι ἀμώμῳ νόμῳ, 2.177.2) but condemns one of the Babylonian practices:

> The most shameful rule amongst the Babylonians is this: every woman in the country is forced to sit in the temple of Aphrodite and have sexual intercourse with a stranger once in her life
>
> ὁ δὲ δὴ αἴσχιστος τῶν νόμων ἐστὶ τοῖσι Βαβυλωνίοισι ὅδε: δεῖ πᾶσαν γυναῖκα ἐπιχωρίην ἱζομένην ἐς ἱρὸν Ἀφροδίτης ἅπαξ ἐν τῇ ζόῃ μιχθῆναι ἀνδρὶ ξείνῳ (1.199.1)

He also educates as well as informs his audience. Those Greeks who think the communal sharing of wives is a Scythian practice are wrong, it is Massegetan (1.216.1) and he corrects the ignorance of Greeks about Egyptian character and practices (2.45). As Baragwanath notes, differing *nomoi* pose a challenge to the external audience, in assessing motivation, and understanding speech and action.[243] In this way, he encourages his readers to see *nomos* as a matter for debate, disagreement and judgment, which reflects also his adversarial side.

[243] Baragwanath 2008: 107-110.

3. The adversarial model

The model of Herodotus as heir to Homer and arbiter between conflicting positions, therefore, does not fully explain his methodology. In dealing with the Helen *logos* in Book 2, he subjects Homer to critical scrutiny, agreeing with the Egyptian priests' account in which Helen is detained by Proteus in Egypt and never gets to Troy, and reasoning (ἐπιλεγόμενος) that, if she had been in Troy, the Trojans would have given her back to the Greeks, whether or not Alexander consented (2.120.1). He intrudes as narrator with his suppositions (συμβάλλομαι, 2.112.2) and his opinions (ἐγὼ γνώμην ἀποφαίνομαι, 2.120.5) in a way that Homer does not.[244]

In this way, some argue, his form of self-display has parallels with sophists and medical writers of his time. In criticising Homer, he is setting up his own authority as someone who pursues *historiē* and may be mounting a challenge to his supremacy.[245] In this branch of scholarship, historiography is a branch of rhetoric, and Herodotus part of an intellectual tradition which values competition and in which the historian is 'fighting his own literary battle'.[246] Thomas argues that Herodotus was part of a world of polemical and rhetorical argument, in that both he and his audience saw the art of persuasion as partly a matter of display (*apodeixis*) which one could appreciate and enjoy, as when Herodotus has Artemisia say 'I will demonstrate what I think is the right advice' (τὴν δὲ ἐοῦσαν γνώμην με δίκαιόν

[244] Marincola 1997: 6; Dewald 1987: 147-170.
[245] Boedeker 2002: 108; Thomas 2000: 267; Lateiner 1987: 104-8; Hartog 2000: 384, 388; Moles 1993: 97; Baragwanath 2008:33;2012: 30 notes that Herodotus sometimes rejects the omniscient vantage of the Homeric narrator; Dewald 1998: 638 in notes to Waterfield translation.
[246] Wiseman 1979: 28; Marincola 1997: 12; Branscome 2013: 11-26 on Herodotus as enquirer with textual rivals: he uses them to show how not to do historiography and his approach is didactic and polemical.

ἐστι ἀποδείκνυσθαι, 8.68α1).[247] This approach makes Herodotus more combative, more adversarial, than the model of him as judicial arbiter, and aligns him more closely to the Athenian model of forensic oratory. However, it is notable that, although there are some law-court scenes in the *Histories*, there is only one passage in direct speech in the *Histories*, that of Thearides, which we would categorise as a forensic speech, when he successfully persuades the Aeginetans not to remove Leotychides, but to take him to Athens to secure the release of hostages (6.85).

These two models, therefore, of law as a form of arbitration, and law as adversarial, of the type encountered in forensic oratory, do not answer fully the question of Herodotus' methodology in analysing *nomos*. I think it is necessary to interrogate our own preconceptions of 'law' and distinguish more precisely between the various elements of legal proceedings; gathering evidence and assessing credibility are different from interpretation, which in turn is distinct from the act of judgment. Herodotus' *historiē* into law is rarely just descriptive; rather, it involves identifying the evidence, and the area of dispute, and coming to a judgment.[248] Within that process there are, I argue, three main stages. I will use modern examples and the model of Athenian oratory to show some parallels with the *Histories* but also significant differences. I will also distinguish between that law which imposes punishment for offences, and law as social control, the regulation of everyday life.

[247] Thomas 2000: 219. Gagarin 2002:13 on ἀποδείξω in speeches of Antiphon and Gorgias. Zali 2015: 24 on language of proof, performance, argument and persuasion which Herodotus shares with sophists and natural philosophers.
[248] Munson 2001b: 221-2.

4. An institutional approach to *nomos*?

In my last chapter, I discussed the role of Solon, Lycurgus and Deioces as lawgivers, and, in the case of Sparta and Media, the creation of associated institutions. However, the lawmaking of the Carian women was performed outside a formal institutional framework. This makes Herodotus' concept of the rule of law very different from either modern or classical Athenian analyses. The modern lawyer will start with written statute or case law and the institutions of the law courts, legal profession and judiciary. In the examples I give in this chapter on child abuse, the specific offence, relevant to a criminal prosecution, is child cruelty.[249] In civil proceedings however, where a local authority seeks to protect a child from significant harm, the relevant provisions are in the Children Act 1989.[250] Hart also identified 'rules of adjudication' which confer powers on judges to make decisions within a prescribed court structure with defined procedures.[251] The legislation I refer to is gender-neutral, though I will give an example of a judge who invokes a gender trope in his judgment.

The legal historian of Athenian law has the resource of the surviving speeches of the Attic orators, of which approximately three-quarters, according to Todd, were delivered in law court trials, which he terms 'forensic'; the rest were delivered either to a deliberative body, usually the Assembly ('symbouleutic' or 'demegoric' in Todd's terminology) or were display speeches, classified by later rhetorical theorists as 'epideictic'.[252] The forensic speeches given in the law courts are, therefore, invaluable source material for scholars of Athenian law. In gender terms, the Athenian courts exclude women; they have no role as litigants, witnesses or *dikastai*, and their presence or absence in a speech will be determined by the rhetorical

[249] S1 Children and Young Persons Act 1933.
[250] S31(2) Part IV Children Act 1989 as amended.
[251] Hart 1961: 94-5.
[252] Todd 2005: 103n.21. See also Gagarin 2004: 174; Todd 2005: 97-99; Todd and Millett 1990: 13. Hunter 1994: 5.

purpose of the male speechwriter. Harrison's index entry: 'women, disabilities' sums up their status in the Athenian law courts.[253]

To what extent, therefore, can we use the references to law courts and judicial proceedings in the *Histories* to analyse Herodotus' concept of the rule of law? As Thomas states, 'we cannot examine law by itself without the apparatus within which it was applied and the structures – either cultural or political – in which it was created, and then argued over, supported, evaded, and put into action'.[254] Though there are references to law courts and judges (four examples of τό δικαστήριον and seven of ὁ δικαστής)[255] in the *Histories*, the law court references are problematic. It is not clear why Herodotus uses τό δικαστήριον in some contexts but not others. For example, it is the place where Miltiades is prosecuted by his enemies (ὑπὸ δικαστήριον αὐτὸν ἀγαγόντες, 6.104.2) and subsequently acquitted, but is this the same body that then elected him general (αἱρεθεὶς ὑπὸ τοῦ δήμου, 6.104.2)? Herodotus does not appear to distinguish between δικαστήριον and δῆμος in his account.[256] Of the two other references in the *Histories* to legal decisions made by the Athenians, we are not told whether the fine on Phrynichus for producing a play called *The Fall of Miletus* (6.21.2) and the case brought by Xanthippus (ὑπαγαγὼν ὑπὸ τὸν δῆμον Μιλτιάδεα ἐδίωκε, 6.136.1) against Miltiades, for deceiving the people, were heard in the Assembly or another court.[257] Ostwald highlights this

[253] Harrison 1968: 346.
[254] Thomas 2016: 1.
[255] Powell 1938: 91. τό δικαστήριον in 6.85.1; 6.72.2; 6.104.2; 9.93.3. ὁ δικαστής in 1.96.2; 5.25.2; of Persian royal judges: 3.14.5; 3.31.2; 3.31.3; 5.25.1; 7.194.1.
[256] Hornblower and Pelling 2017: 229.
[257] Hornblower and Pelling 2017: 112. Harris 2013: 16 begs the question when he states that 'the three [Athenian] trials mentioned by Herodotus clearly took place before the Assembly or in a court'.

lack of clarity when he says these three trials appear to be before 'some kind of popular court though one would expect them to be before an archon or the Areopagus'.[258]

As for the two trials in Sparta which, according to Herodotus, are brought before the δικαστήριον, that is, the decision to surrender Leotychidas to the Aeginetans (6.85.1), subsequently revoked following a persuasive speech by Thearides, and the banishment of Leotychidas for bribery (6.72.2), the constitution of the court is uncertain; was the other king present alongside the *gerousia* and the ephors?[259] The fourth use of δικαστήριον in the *Histories* concerns the trial of Euenius by the Apollonians (ὑπαγαγόντες μιν ὑπὸ δικαστήριον κατέκριναν, 9.93.3) for falling asleep on his watch. His punishment is to be blinded but the consequences for the Apollonians are severe, in that their flocks stop producing offspring and their fruit trees no longer yield fruit. As a result, they consult the oracle, are told they had acted unjustly (ἀδίκως, 9.93.4) and are advised to compensate Euenius. In this story, the institution of the δικαστήριον appears to be much less significant than the institution of the oracle, which gives the authoritative legal judgment.

This lack of information about procedure and venue, whether in Athens, Sparta or Apollonia is, in my view, unsurprising. With regard to Athens, Herodotus' sources probably had no 'particular penchant for the niceties of Athenian judicial procedure'[260] any more than Herodotus himself, and in any event his narrative is likely to reflect what he and his sources

[258] Ostwald 1986: 28-31. Hornblower and Pelling 2017: 229 on 6.104.2 comment that 'Herodotus is unlikely to have had procedures in mind'; 292-293 on 6.136.1-2. Rhodes 2018: 276 writes that Herodotus was 'not attending to the precise nature of constitutional government'.
[259] Hornblower and Pelling 2017: 183-4; 201-2. They also cite Wilson *Herodotea* 115 to state that 'Thearides' is more likely to be right than 'Theasides'.
[260] Ostwald 1986: 30.

knew of contemporary Athens rather than the history of its legal institutions.[261] For example, Ephialtes' reforms of 462 BCE transferring judicial powers of the Council of Areopagus to *dikasteria* are chronologically well after Miltiades' two trials and the fining of Phrynichus, but it is likely that those Athenians who remembered the trial of Miltiades and told Herodotus about it would use a word with which they were familiar, even if it was anachronistic.[262]

As regards Sparta, Millender comments on the contrast between the detailed treatment of kings and the 'rather sparse' presentation of Sparta's 'constitutional structure' (ephors, *gerousia* and *ekklesia*) by Herodotus, and refers to his 'weaknesses including the use of vague, imprecise language' in that he points out the function of an office in action rather than abstractly.[263] I argue that what Millender regards as Herodotus' 'weakness' is, in fact, a reflection of his legal method. In the case of Sparta, I will analyse how the institutions created by Lycurgus worked in practice in chapter 4, arguing that Herodotus places law in a social context rather than giving us rules and procedures, of which he or his sources may have been ignorant.

For these reasons, therefore, I argue that an approach to *nomos* in the *Histories* based on the institution of the law court and forensic oratory, is unlikely to be helpful, because it does not reflect Herodotus' own priorities or methodology. How significant, therefore, is the exclusion of women from formal legal processes? I consider now how Herodotus constructs a narrative in which the rule of law is explored, debated and challenged, in which law court scenes and forensic oratory do not play a key role.

[261] Ostwald 1986: 5-15 for Athenian law 508-430 BCE.
[262] Christ 1998: 14; Hornblower and Pelling 2017: 293.
[263] Millender 2002: 2-3, 33.

5. Source material: what are the rules?

5.1 Written law

What source material on *nomos* do we have in the *Histories*? Ostwald, in my view, confuses the issue by referring to political and judicial *nomoi*, that is, the 'rules and regulations by which the internal life of society as a state is ordered' as 'statute', whether written or not, in the fifth century, because 'statute' in modern usage suggests a formalism which is not reflected in the *Histories*.[264] There is certainly no substantial body of written statute for Herodotus to consult. The Persian royal judges who are consulted by Cambyses, for example (3.31) may refer to written royal decrees, Deioces, once he becomes tyrant, puts his judgments in writing (1.100), and the laws drawn up for the Athenians by Solon (1.29) were possibly written down, although Herodotus does not say they were; 'if we were to depend on Herodotus alone we should never know whether Solon's legislation at Athens was written or not'.[265]

However, I will consider briefly the import of those rules which are described as written because it is one of the ways tyrants give coercive orders. The institution of tyranny, and the role of kings as judges is a dominant theme in the *Histories* which I will explore more fully in the next two chapters, and written orders or judgments are an aspect of that. Deioces, for example, gives written decisions as a substitute for oral judgments, Darius uses a series of sealed letters to have Oroetes killed (3.128), and the same king orders the deracination of Paeonia by means of a letter to Megabazus (5.14). However, written messages can also be a

[264] Ostwald 1969: 43-47.
[265] For the Persian decrees; *CAH* iv. 87; Asheri 2007: 431; Dewald 1998: 634 in notes to Waterfield translation. But Ostwald 1969: 46 for quotation; he notes the lack of distinction in Herodotus between written and unwritten *nomoi*. Asheri 2007: 99 is too prescriptive with his examples of written laws including Solon's (1.82.7-8; 1.132.3; 1.137.1; 1.144.3). Thomas 2000: 50-60 gives the example of Amasis' *nomos* (2.177.2) as one which may or may not have been in writing.

means to encourage rebellion. Harpagus sends such a message to Cyrus in a hare (1.123.4), and Histiaeus has a slave tattooed with a similar message for Aristagoras (5.35.3).[266] Women are shown to have skills in exploiting and deciphering such text. Nitocris exposes Darius' greed through an inscription on her tomb (1.187) and Gorgo works out how to read the tablet sent by Demaratus, warning of Xerxes' imminent invasion of Greece (7.239.3-4). In this way, I think Herodotus' portrayal of the written word does fit the model of law as a coercive order backed up by threats, but he also shows how some individuals, female and male, are able to use this technology to subvert the tyrant's coercive order.[267]

As regards Sparta, in the preface to his book on Spartan law, MacDowell issues a number of significant disclaimers, one of which is that much of the law is unwritten. In addition, he writes, the evidence is incomplete, later writers tend to mythologise Spartan life, and the 'boundaries of the subject are difficult to define'.[268] His conclusion is no more secure: 'even on some of the most obvious topics we are almost totally ignorant'.[269] This assessment is based, moreover, on a variety of sources beyond Herodotus, including Xenophon and Plutarch. Written Spartan law, therefore, is not the foundation for the rule of law in the *Histories*. My analysis of the rule of law and gender in the *Histories*, therefore, is based on Herodotus' narrative which records the information given to him by his informants, and the speech he constructs for his characters, who discuss, debate, argue, and evaluate *nomos*.

[266] Zadorojnyi 2006: 355-365.
[267] Both Zadorojnyi (2006: 355-375) and Steiner (1994: 127-154) discuss the despotic aspect of writing but not its use as a means of resisting tyranny.
[268] MacDowell 1986: Preface.
[269] MacDowell 1986: 151. Topics which remain uncertain: penalties for homicide (146); the method of voting in trials of kings (142); the procedure, if any, for arbitrations (136); why particular kinds of cases were reserved for the kings (121); what word the Spartans themselves used for an heiress (96); what constituted adultery (87); what penalties were imposed for marrying late or marrying badly (74); the nature and consequences of disenfranchisement for cowardice (46).

To summarise, therefore, most *nomoi* in the *Histories* are not spoken, argued about or enforced in a law court. Atossa, for example, declares both a gender norm and the Persian *nomos* of expansion, when talking to Darius (3.134) in their bedroom, both Artemisia and Xerxes pronounce on the inferiority of women (8.68; 8.88) at a gathering of the king and his advisors, Gyges declares what is *anomos* (1.8.4), and Candaules' wife then enforces the penalty (1.11) within the *oikos*, the Daughters of Danaus teach the rites of the Thesmophoria from Egypt to the Pelasgian women (2.171.3) in a ritual setting, the mother of Scyles teaches him the Greek language and custom (4.78.1) again in the *oikos*, and Euelthon rejects Pheretime's request for an army in a speech which includes a gender norm (4.162.5).

5.2 Spoken law

I have argued that an 'institutional' approach, based on an analysis of those sections of the *Histories* where Herodotus refers to law courts, is not productive, but Herodotus nevertheless refers to legal proceedings. Does he, therefore, take the opportunity to construct judicial speeches for those of his characters who are involved in legal proceedings? Dionysius of Halicarnassus noted that Herodotus did not include many speeches to the public assembly or in a judicial setting (οὔτε γὰρ δημηγορίαις πολλαῖς ὁ ἀνὴρ οὐδ᾽ ἐναγωνίοις κέχρηται λόγοις, *Thuc*. 23), in contrast with Thucydides. In fact, though Herodotus constructs some deliberative oratory for his characters, and these speeches play a significant role in the *Histories*, he does not do the same for those characters who are involved in legal proceedings.

In the trial of Demaratus, based on his father's denial of paternity (6.65-70), where one might expect Herodotus to construct a forensic speech for the occasion, he, in fact, gives a form of defence speech to Demaratus' mother, who is not a party to the court proceedings. Of all the

characters involved, she makes the most substantial contribution orally, moving the legal debate from the law court to the *oikos*. In terms of Herodotus' methodology, this suggests that he did not regard it as necessary to construct any form of forensic oratory for his characters, whereas he does give us the long deliberative speeches of the Constitutional debate (3.80-3.82) and those of Socles (5.92) and Leotychides (6.86).

The role of speech in general in the *Histories* has been the focus of a number of studies. Bakker has done a detailed study of all forms of speech in the *Histories* and his definition of speech, as a consequence, is very wide: 'utterances embedded in the narrative consisting of a verb expressing a speech act, as well as a complement of that verb'.[270] He argues that the historiographical function of Herodotus' speeches, both those he constructs for characters in his text, and for his informants, is to establish his authority as a historian, adopting the *persona* of both epic storyteller and researcher.[271] His emphasis, therefore differs from those who focus more on the relationship between speech and action, and the power dynamics which are revealed in speech, making demands on the listener or reader to work out motivation and enter the debate which Herodotus stages for us.[272]

My focus is different in that I will analyse Herodotus' use of speech, by female as well as male characters, as a key part of his examination of the rule of law. The role of female speech in the *Histories* has not been addressed systematically by scholars. Zali, for example, states that women's speech is 'mainly reserved for barbarian women',[273] an argument which is contradicted by a number of significant verbal exchanges in the *Histories* between Greeks,

[270] Bakker 2007: 5-6.
[271] Bakker 2007: 22.
[272] Pelling 2006: 103-121; Baragwanath 2008: 22-26; Zali 2015: 6-16; 305-310; Marincola 1997: 99 on the *Histories* being based on what people *say* about the past.
[273] Zali 2015: 44.

male and female, which I outline in the following chapters. Lardinois and McClure's book *Making Silence Speak: Women's Voices in Greek Literature and Society* has only two index references to Herodotus.[274] McClure makes a bold claim when she states that 'both Athenian and non-Athenian literary texts universally praise female silence and verbal submission while equating women's talk with promiscuity and adultery'.[275] I will show that this is certainly not the case in the *Histories*. Women's speech is an integral part of a number of narratives, between Greeks and non-Greeks, in which *nomos* is considered; conversation, reasoning, argument, persuasion, explanation, debate and judgment are all forms of speech which are practised by women and engage with the rule of law.

In this respect, there is a clear contrast between Herodotus and Thucydides, who saw no need to include any female speech in his work.[276] When he has Pericles advise the war widows:

> There is great glory for you in not being worse than your existing nature and for whichever of you has the least reputation among men concerning either her excellence or her faults
>
> τῆς τε γὰρ ὑπαρχούσης φύσεως μὴ χείροσι γενέσθαι ὑμῖν μεγάλη ἡ δόξα καὶ ἧς ἂν ἐπ᾽ ἐλάχιστον ἀρετῆς πέρι ἢ ψόγου ἐν τοῖς ἄρσεσι κλέος ᾖ (2.45.2)[277]

he reflects his own practice in according *kleos* to all women by not talking about them, far less giving them speech. Wiedemann argues that this is because the intervention of women is outside the norms of Thucydides' subject matter. Their action signals social disruption, or

[274] Lardinois and McClure 2001.
[275] McClure 1999: 20.
[276] Shannon-Henderson 2019: 89-91.
[277] Shannon-Henderson 2019: 89 for translation.

treachery, and, in the case of the Corcyran women, is against their nature (παρὰ φύσιν).[278] Hornblower notes that Plutarch (*Mor*.242E, *Virtues of Women*) took Pericles' injunction to mean that 'women's place is in the home', and that the role for women in this speech corresponds with the general treatment of women in Thucydides, which is to present women against a background of turmoil (θόρυβος).[279] Shannon-Henderson also argues that women, for Thucydides, were marginal figures, whose involvement in political affairs could only be detrimental.[280]

Thucydides' text, therefore, reflects and reinforces those other 5th BCE texts, in which characters, male and female, praise female silence and seclusion in the *oikos*.[281] The characters, of course are voicing a patriarchal ideology which can be subtly undermined. In Andromache's speech, in Euripides' *Trojan Women*, for example, she says 'I didn't let smart-talking women into my house ... I used to keep my mouth shut' (ἔσω τε μελάθρων κομψὰ θηλειῶν ἔπη οὐκ εἰσεφρούμην ... γλώσσης τε σιγὴν, E. *Tr*. 651-2; 654) but she also laments the fate to which conformity to that ideology has brought her (E.*Tr*. 644-5).[282] Meanwhile, Ajax's admonition to Tecmessa: 'Woman, silence is an adornment to women' (γύναι, γυναιξὶ

[278] Wiedemann 1996: 83-90. Athenian women, *Th*.1.90.3; Argive women, *Th*.5.82.6; Plataean women, *Th*.2.4.2; Plataean woman giving Thebans an axe, *Th*.2.4.4; Corcyran women *Th*.3.74.1.
[279] Hornblower 1991: 314.
[280] Shannon-Henderson 2019: 91-100.
[281] McClure 1999: 19-24. Examples: 'Speech shall be men's care' (μῦθος δ' ἄνδρεσσι μελήσι, H.*Od*.1.358); 'A woman should not practise speech, for that is terrible. To be ruled by a woman is the ultimate outrage for a man.' (γυνὴ μὴ ἀσκείτω λόγον: δεινὸν γαρ. ὑπὸ γυναικὸς ἄρχεσθαι ὕβρις ἔιη ἂν ἀνδρὶ ἐσχάτη, Democritus 68 F 110-111 DK); Phaedra: 'My starting point was this, to be silent and hide my disease. For the tongue is not to be trusted: it knows well how to admonish the thoughts of others but gets from itself a great deal of trouble'. (ἠρξάμην μὲν οὖν ἐκ τοῦδε, σιγᾶν τήνδε καὶ κρύπτειν νόσον. γλώσσῃ γὰρ οὐδὲν πιστόν, ἣ θυραῖα μὲν φρονήματ᾽ ἀνδρῶν νουθετεῖν ἐπίσταται, αὐτὴ δ᾽ ὑφ᾽ αὑτῆς πλεῖστα κέκτηται κακά. Eur. *Hipp*. 394-399); Parthenos: 'I know that for a woman silence is best, and discreet behaviour, and staying quietly within doors' (γυναικὶ γὰρ σιγή τε καὶ τὸ σωφρονεῖν κάλλιστον εἴσω θ᾽ ἥσυχον μένειν δόμων.Eur. *Hcld*. 476-7).
[282] Pelling 2000: 193.

κόσμον ἡ σιγὴ φέρει, S. *Aj*. 293)[283] emphasises the repressive nature of patriarchal ideology, but she proves her rhetorical competence in a speech in which she reminds him of his obligations to family and to her (S. *Aj*. 485-524), as many female characters in the *Histories* do to men.[284] Moreover, as Loraux acutely observes, the Greeks themselves did not heed Pericles' words, creating an 'ocean of discourse on the female race'.[285]

To what extent, therefore, was Herodotus' engagement with the rule of law and gender influenced by, or conversely had an influence on the Athenian dramatists?[286] This question arises from the passage in *Antigone* (S. *Ant*. 909-912) which echoes a very similar one in the story of Intaphrenes' wife (3.119.6) and which I consider as a case study in chapter 4. I argue that the dialogue between the characters (Creon and Antigone, and Darius and Intaphrenes' wife) shows a very different mode of argument on the rule of law, highlighting not gender difference, but a contrast between an adversarial and an inquisitorial form of argument. In chapter 3, I consider a story where Athenian women, like Hecuba and her women, attack a man with their dress pins but in a very different context. Both stories raise important questions about the role of women in policing male behaviour and punishing male offenders, but the Herodotean story, I will argue, presents us with Herodotus' own perspective (the 'external' view) on Athenian and Aeginetan *nomoi*.

In a broader context, I will argue that there is a thematic link between the tragedies in particular and Herodotus, challenging Bakker's assertion that the tragedies deal with different

[283] Finglass 2011: 226 translation
[284] Finglass 2011: 224, 280-290.
[285] Loraux 1978: 69 - 'sur la race des femmes, les Grecs ont mis en place un océan de discours'.
[286] Pelling 2000: 189-218; Saïd 2002: 117-147; Chiasson 2003: 5-35; Blok 2001: 95-116; Bakker 2007: 15-17. Female speech in drama has received much more scholarly attention than female speech in the *Histories* and it is beyond the scope of this thesis to do a detailed comparative study of the dramatists and Herodotus.

stories and themes from Herodotus.[287] On the contrary, some themes are of central importance to both genres. The self-destructive *oikos* is a dominant theme in Euripides' *Electra*, for example, as well as the Herodotean stories of Astyages, and Xerxes, revenge is a key motif in Euripides' *Hecuba* and the story of Pheretime in the *Histories,* and reciprocity in marital relationships is emphasised by both Tecmessa in Sophocles' *Ajax* and Candaules' wife in the *Histories*.[288]

However, it is remarkable, in the context of 5th century BCE discourse, that nowhere in the *Histories* does Herodotus, as narrator, express the view that women should be silent because of their gender. The Magus stops women talking to each other in the Persian *oikos,* but this is because he fears exposure (3.68.5), Periander stops everyone, male and female, talking to his son Lycophron (3.53) and Deioces hides himself away, fearing the judgment of his peers (1.99.1). In all these cases, the silencing of women and other subaltern groups is presented by Herodotus as indicative of tyrannical behaviour, not a reflection of gender norms.

Female speech, however, may not be heard as authoritative, even if the right to speak is allowed, and characters frequently fail to listen to women's advice or warnings.[289] In this study, I will highlight different types of female speech, and argue that women sometimes do speak with authority, on behalf of men and the community, as well as on their own behalf. Moreover, those men who fail to 'hear' authority in women's speech often suffer as a consequence, for example, Cleomenes, who ignores the authoritative priestess to Athena

[287] Bakker 2007: 16.
[288] The passages from Herodotus are fully dealt with in case studies. For tragedy, Mossman 2001: 377, 383 on self-destructive *oikos* in Euripides' *Electra;* 1995: 26-7, 124-5 on revenge in Euripides' *Hecuba,* 170-175 in the *Histories;* Finglass 2011: 279, 289 on theme of reciprocity in *Ajax.*
[289] Beard 2017: 17 - 'to become a man (or at least an elite man) was to claim the right to speak'; 24 - women are allowed 'niche' speech; that is, they can talk about sectional interests and victim status.

Polias in Book 5. However, a more prevalent form of female speech, which reflects women's subaltern status, is to be found in negotiation, persuasion and forms of informal mediation. I will consider the various forms of female speech and their purpose, in chapter 3.

In the context of *nomos*, since I am arguing that Herodotus uses speech to highlight issues of credibility, the evaluation of conflicting accounts, the interpretation of events and the making of judgments, his own reliability should be examined. West argues that his technique is more that of a journalist or historical novelist than a systematic researcher and certainly, if we apply modern criteria to the *Histories*, some of it could be called historical fiction; 'the rendering of historical happenings by way of the personalized and momentary experiences of individual human beings,' and the 'employment of narrative situations that open to inside views of the characters' minds'.[290] This is displayed by Herodotus not only in his narrative but also in the speech he constructs. Jacoby argued that we should distinguish between 'novelistic' and political-historical' speeches' in the *Histories*.[291] This suggests that there is a fictional element to the non- political speeches, a view which Flory takes in calling the story of the Amazons, which includes both direct and indirect speech, a 'fairytale'.[292] However this would apply to all of the characters in the stories whatever their role. We are invited into the thoughts and feelings of Xerxes the king as much as Cyno the slave. Herodotus thereby focalises the thoughts and emotions of groups and individual characters, because he regards this as an essential part of exploring and explaining *nomos*.

[290] West 2003a: 417. Cohn, 1999: viii,151.
[291] Jacoby, 1913: 492. 'Man wird zu scheiden haben zwischen den 'novellistischen' Reden und den 'politisch-historischen'.
[292] Flory, 1987:112.

Jacoby's distinction also suggests that the 'political-historical' speeches are not fictional or, to put it another way, are factual. This is equally problematic when we consider the context in which most of the speeches were delivered. The second conversation between Artemisia and Xerxes (8.101-2) is in private and involves just the two of them; how could the version given by Herodotus be anything other than his own creative construction? There is a scholarly consensus that this would have been taken for granted by Herodotus and his audience. [293] Thucydides problematises the idea of including in his narrative what people said as well as what they did, by making a distinction between what was said (ὅσα μὲν λόγῳ εἶπον ἕκαστοι, *Th.*1.22.1) and what was done (τὰ δ' ἔργα τῶν πραχθέντων, *Th.* 1.22.2) and acknowledges the difficulty 'for himself *and his informants*'[294] in remembering the former accurately; he reports, therefore, 'the case which I thought him most likely to have presented'[295] (τὰ δέοντα μάλιστ' εἰπεῖν, *Th.*1.22.1). Herodotus does not reflect on his methodology in this way. Indeed, he asserts the authenticity of the speeches made in the Constitutional Debate (3.80-82; 6.43) which leads Bakker to argue that the opposition between 'historical' and 'fictional' creates a false dichotomy which ignores Herodotus' own narratorial intervention in the story of Cyrus, for example, when he vouches for his version being 'the true story' (τὸν ἐόντα ... λόγον, 1.95.1).[296] This intervention, I argue, has to be considered in the context of Herodotus' interpretative skills, which makes it more complex than a binary opposition of truth and lies. Herodotus arrives at a judgment, having assessed each of the four stories he hears about

[293] Baragwanath 2008: 36; West 1985: 286. Bakker 2007: 2-3; Marincola 1997: 6; Wiseman 1979: 28-9; Usher 1999: 222; de Jong 2013: 255.
[294] Hornblower, 2002: 375 (his italics). Letter to *The Guardian* 13/02/16 'At school more than 60 years ago I was taught that Hansard was verbatim but when I transcribed Select Committees some years later, one of the first instructions I received was: "If the MP isn't speaking sense, then make him speak sense"' (Gitta Zarum).
[295] Dover's translation, 1965: xii.
[296] Bakker 2007: 22

Cyrus, that one is the most convincing. He also shows his characters engaging with questions of credibility through speech.

6. Interpretation

Legal rules require interpretation; as Hart puts it, 'all rules have a penumbra of uncertainty'.[297] We as readers of the *Histories*, moreover, are actively involved in interpretation, as lawyers are. Herodotus engages with notions of proof and probabilities, not certainties, in collaboration with his audience.[298] This mirrors legal procedure. In modern law, the test in civil proceedings is 'the balance of probabilities', in criminal cases, 'beyond reasonable doubt', making law a matter of judgment rather than certainty, the boundary between 'reasonable' and unreasonable' doubt sometimes difficult to draw, and 'facts ... not as concrete as they may seem'.[299]As Baron puts it, 'the choice is not between "fact" and "fiction", or between "objectivity" and "subjectivity". Someone's story will emerge in legal decisions; the only question is whose'.[300] Judges as well as legal practitioners, are storytellers, creating a legal narrative out of the material presented in court, shaping it, putting it into chronological order, making findings of fact and applying the law, and, like all authors, making strategic choices about *how* to tell the story.[301]

[297] Hart 1961: 12.
[298] Baragwanath 2008: 22-26; Bakker 2002: 3-32; Thomas 2000: 258.
[299] Holland and Webb 2016: 132.
[300] Baron 1991: 85, 97: 'While almost no one believes these days that lawyers and judges just apply rules to facts, there remains a strong tendency to treat the facts of a case as just there, independent of and prior to the attorney's presentation of them. Authors who write about storytelling encourage lawyers to question this tendency and to examine carefully their role in creating the reality of legal cases'; 101: 'most analyses of effective storytelling techniques agree that, in framing the narrative, the storyteller must take into account the presuppositions and beliefs of his or her audience'.
[301] Rackley 2010: 45-46; Baron, 1991: 105 'stories and storytelling are integral parts of every legal setting and ... anyone interested in understanding the law must take that fact seriously'.

This is the way, I argue, to read Herodotus on the rule of law, as someone whose narrative is a creative and structured response to the stories about *nomos* which he is told by his informants. By providing us with shifting focalisations, rival strategies, and argumentative speech, Herodotus 'refuses an authoritative monologic discourse'.[302] Irwin notes that indirect and direct speech in oracular *logos* stresses the role of the interpretive community and both creates and resolves ambiguity.[303] This has a parallel in modern law; Hart refers to the 'open texture' of law, which acknowledges the impossibility of drafting rules of conduct which cover every situation, which determine every dispute, which foresee every eventuality. Every judicial exercise requires interpretation.

Munson argues that Herodotus' interest in *thōmata* is partly that they act as an impulse to inquiry, they require interpretation.[304] Darius, for example, finds Intaphrenes' wife's request surprising (θωμάσας τὸν λόγον, 3.119.5), not her actions in lamenting her husband's fate outside the palace gates. Her remarkable gender performance, therefore, is a prompt to enquiry, rather than being an example to be condemned. Irwin and Greenwood point out the central role of autopsy in Herodotus' account, drawing the audience into an interpretive community, engaging us in assessing and evaluating his *logoi*, as conveyed by the verb συμβάλλειν and its middle form συμβάλλεσθαι.[305] In Hohti's analysis of this verb, he describes the process of reaching a conclusion by comparing various pieces of evidence, choosing the significant facts, recognising that two parts, one of which may be a sign (an

[302] Dewald 2002: 267-289 for Herodotus as both investigator and critic; 1999: 225-7 on Herodotus' 'narrative stage' allowing for shifting focalisations and 'our judgment matters as well as the narrator's'; Barker 2009:199 on the 'dissenting strategies' the debates reproduce; Munson 2005: 6n27 on Herodotus as an 'expert interpreter of all types of codes of information'.
[303] Irwin 2007: 52.
[304] Munson 2001b: 1-19, 233-4, 259. Baragwanath 2008: 29 'the *thōma* terminology thus invites readers to become all the more alert to potential explanatory connections and wider contexts'.
[305] Irwin and Greenwood 2007: 5-9.

oracle, or a dream, for example), belong together, and reaching a conclusion, whereby the 'intelligible whole is more than the sum of its parts'.[306] He gives the example of the disputed interpretation of the oracle before Salamis, between the Athenian elders and Themistocles: 'He claimed that the conclusion the interpreters had come to about this wall of wood was not entirely correct' (οὐκ ἔφη πᾶν ὀρθῶς τοὺς χρησμολόγους συμβάλλεσθαι, 7.143.1). This interpretive, forensic exercise, assessing evidence and conflicting viewpoints and stories, is integral to Herodotus' concept of the rule of law, and is performed by women as well as men. Polycrates' daughter, for example, correctly interprets a dream and unsuccessfully tries to warn her father of an imminent risk (3.124). In the next chapter, I will show that there are those who possess interpretive skills but lack the power to convince those they are warning or advising.

To arrive at a balanced judgment, therefore, is more complex than a binary opposition of truth and lies. A judgment is always a choice between alternatives not a pronouncement of truth. To that extent, the aim of any legal process is more modest than a search for 'the truth'. I do not agree, therefore, with Baragwanath, for example, who argues that Herodotus puts the reader in the position of the Athenian juror, who had to 'judge the truth particularly about sequences of events and motives', or Marincola, who identifies a place for the reader to be 'actively engaged in a joint search for the truth about the past'.[307] Rather, our role is, like Herodotus,

[306] Hohti 1977: 10-13. Parker 1989: 74; 2011: 14 on oracles as a form of enquiry; Barker 2006: 9-13 on the oracle as an institution which stimulates argument about interpretation and involves the reader; Asheri 2007: 41-42 on oracles as religious authority, requiring interpretation. In this respect an oracle is like a statute which requires interpretation (*sumballomai*); Mikalson 2002: 196 on oracles as foreshadowing device; Harrison 2000: 127-8 on oracles as 'customary long-established sources of insight into the divine'; Malkin 2011: 214: the divine gives 'directions for travel'; Lateiner 1989: 25 on the oracle as polysemic; Maurizio 2001: 41-46 on the authority and ambiguity of the Pythia.

[307] Baragwanath 2008: 19; Marincola 2006: 16.

'to listen critically, to question, and to judge'.[308] We ask whose account is more convincing, based on an assessment of the evidence. The type of judgment, however, depends on the nature of the dispute, and whether the aim is to apportion blame or resolve a dispute.

7. Judgment

Hart writes on the nature of judging that 'we live among uncertainties between which we have to choose, and the existing law imposes only limits on our choice and not the choice itself'.[309] Each act of judgment is a 'fresh choice between open alternatives ... because we are men not gods'.[310] The type of judgment that is reached in modern law depends on the area of litigation, and the extent to which an inquisitorial or an adversarial approach is appropriate. In both the following examples, law is applied to the issue of child abuse, but the focus in proceedings is very different.

The area of law which most clearly constructs the 'other' is criminal law, the state prosecution of a defendant. Law, in this context, is adversarial, a competition of words, the testing of narratives; one person is lying or being evasive or being 'economical with the truth'. The courtroom itself constructs 'the other', both as a physical place, the dock, where the defendant sits apart from the judge and jury, and as the person being cross-examined, whose story is being challenged, tested, undermined. The advocate will make full use of rhetorical claims based on binary opposites to emphasise her case. Court procedures also emphasise difference; the judge and counsel wear wigs and gowns, and the majesty of law is expressed through the court crest, formality of address and forensic speech. The judge, moreover, not only declares

[308] Bakker 2002: 32.
[309] Hart 1958: 629.
[310] Hart 1961: 125.

the formal penalty for the specific offence, but also articulates moral condemnation of the convicted person's conduct and character. For example, on 19th January 2017, Judge Jeremy Richardson QC sentenced Michala Pyke, and her partner John Rytting to 13 years imprisonment for child cruelty and emotional abuse in respect of Pyke's four-year-old daughter Poppy Widdison, who died as a result of an assault by one of the two defendants. He found that Pyke was 'malevolent and manipulative – you are utterly unfit to be a mother and abused Poppy by giving her drugs ... this was serious cruelty over a long time and regular ill treatment'. Poppy was sedated to 'allow you to indulge in your own squalid passion', both defendants' conduct was 'cruel and deliberate', the child was an 'irritant in respect of your baleful romance' and expressions of love were a 'despicable masquerade'.[311] In this way, the judge not only imposes the legal punishment for specific criminal offences, but also invites his audience to share in the sentiments he expresses.

In this case we see the formal rules of adjudication in action, in that the case was decided by a jury and sentencing was carried out by the judge. However, we also observe a social dimension in the judge's remarks. It is no exaggeration to say that he voices hostility towards the two defendants who have been found to violate the rules of parenting so egregiously. There is, moreover, a gender element in his closing remarks; by invoking the 'unfit mother', a familiar trope in popular discourse, he emphasises by opposition a normative expectation of motherhood. His judgment combines legal requirements, to pass sentence, with moral opprobrium, condemning the defendants' conduct. In both the formal setting of a courtroom therefore and in the judge's summing up, the guilty party is presented as 'other', someone

[311] *The Telegraph*, 19 Jan 2017, https://www.telegraph.co.uk/
accessed 26/01/17.

who has both broken the law and violated social norms and expectations, including gender expectations of a mother.

In terms of classical oratory, this is an example of the appropriate attribution of blame. The skill of the professional speech writer in classical Athens involved creating 'the other' through persuading the *dikastai* to identify themselves with the speaker and against the opponent, and invoking social norms and expectations as part of this identification. Humphries' description of the Athenian law court as 'a theatre for the dramatisation of an ideological view of the *oikos*' is echoed by Foxhall, who portrays the law court as an arena for male competition, often on behalf of family members.[312] In the following chapters, I will explore how characters, male and female, are shown to attribute praise and blame, often in rhetorical contexts, where they aim to persuade. Artemisia, for example, aligns herself with praise for Xerxes, and criticism of his other allies (8.68).

However, modern family law also has a functional role in resolving family disputes,[313] and protecting children from significant harm.[314] The opening provisions of the Children Act set out the overriding principle, which is that the welfare of the child is the court's paramount consideration, and the welfare checklist; what the court has to consider when it is deciding

[312] Humphries 1983: 9; Foxhall 1996: 137-152; Pelling 2000: 12-14 on the 'culture of rhetoric' in 5th and 4th BCE Athens, whereby orators ally themselves with the audience against their opponent.
[313] Either within court proceedings: for example, the Finance Dispute Resolution hearing in an application for financial provision ancillary to divorce or as an alternative through Family Mediation.
[314] Protection of children: S31(2) Children Act 1989 as amended: A court may only make a care order or supervision order if it is satisfied—
(a) that the child concerned is suffering, or is likely to suffer, significant harm; and
(b) that the harm, or likelihood of harm, is attributable to—
(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
(ii) the child's being beyond parental control

any issue to do with a child's upbringing or property.[315] This checklist includes the child's physical, emotional and educational needs, any harm which he has suffered or is at risk of suffering and how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.[316] From this it is clear that modern family law cannot be understood without a knowledge of social and cultural norms. As Stephen Cretney writes, 'Family Law must keep pace with the social realities that it governs and may influence'.[317] For example, the provisions of the Children Act 1989 I have referred to require judgments on what is and is not reasonable parenting (the threshold for state intervention in care proceedings) in seeking to protect children from significant harm.

Moreover, the practice of family law requires an interdisciplinary, inquisitorial approach. Lawyers and judges can claim no special expertise in these areas; in fact, for this very reason, courts commission a report from someone who can assist the court in reaching a judgment on such matters as parenting capacity and the needs of the child.[318] These issues are fiercely contested and involve judgments about social issues and parenting rules which change with time. Family law, 'the regulation of family responsibilities and family identities inside and outside the home' has to be considered, therefore, in a social context.[319] What is required, therefore, in my example, is a judgment on what is reasonable parenting or likely significant harm, which cannot be resolved through statutory interpretation alone. This is significant for my reading of the *Histories* because the regulation of the *oikos* and the performance of normative familial roles is a key aspect of *nomos*, as I explore in the next two chapters.

[315] S1 (3) Children Act 1989.
[316] S1 (3) (b) (e) (f) Children Act 1989.
[317] Masson, Bailey-Harris and Probert 2008: Introduction by S. Cretney.
[318] CAFCASS Officer (known as Children's Guardian in public law proceedings) or social worker (s.7 Children Act 1989)
[319] Diduck and O'Donovan 2006: 7, 17.

The model of court-based adversarial practice, moreover, does not reflect much of the work done by modern lawyers. In most courts (civil, family and the various tribunals which form part of the court structure in England and Wales) wigs and gowns are not required, the court crest is the only marker distinguishing the courtroom from other forms of meeting place, and the proceedings are as likely to be inquisitorial as adversarial, more dispute resolution than punishment. This also had a parallel in classical Athens. The settlement of family or kinship disputes in 4th century BCE Athens through arbitration was a consequence of 'distrust of the court system and worry about the publicity that family squabbles might attract' and, argues Christ, strong social pressure to avoid family litigation, which might threaten the autonomy of the *oikos* and the authority of the *kurios*.[320] In chapter 4 I will show, with case studies from the Spartan *logos*, that disputes to do with marriage, the royal succession and paternity are sometimes resolved through negotiation, in which women are involved as agents.

Conclusion

Any model of Herodotus' methodology needs to recognise both his inquisitorial and his adversarial approach to the rule of law. I have emphasised the key elements of evidence-gathering, interpretation and judgment in modern law, and the socio-legal aspect of family law in particular. I have also shown that, even within the institutional framework of the modern court, the constraints of statute and strict rules of evidence, wider social norms have a significant role to play in litigation. I have also argued that we cannot examine Athenian and Spartan *nomoi* satisfactorily through the institutions of their *poleis*. This places gender relations in a more central role than an approach which focuses on institutions, enabling me to

[320] Hunter 1994: 187 for quotation; Scafuro 1997: 33-39, 42, 126; Christ 1998: 168-173

consider to what extent women have influence in negotiations, and can persuade, in less formal settings than a courtroom, from which they are institutionally excluded, and how judgments are made by women as well as men outside the formal structures of the law court.

Most *nomoi* in the *Histories* are unwritten rules which are conveyed through speech. In the next chapter, I consider the role of speech, female and male, in articulating, enforcing and challenging gender *nomoi*, and as a key part of the performance of gender. I show the significance of female speech to the rule of law, by identifying women who enforce *nomos* through speech (Candaules' wife (1.11) and Athena Polias (5.72) for example), those who manipulate the rules to achieve their own goals or those of their family (Argeia (6.52) and the mother of Demaratus (6.69), for example) and those who resist the rules (the Carian women (1.146) or the mother of Scyles (4.78), for example). Women also have an important role in establishing and transmitting *nomos* (the daughters of Danaus, 2.171), and intervening in speech to warn or advise men when they are at risk of violating *nomos*. Conversely, women are shown not only to practise *nomos* but also to break it, or to break one *nomos* whilst asserting another.

I will show, firstly, that passing judgment, legal debate and rhetorical performance is mostly performed in the *oikos* rather than a formal legal setting such as a courtroom and secondly, that negotiation and persuasion are as important to the concept of *nomos* as the creation of 'the other', which is a significant technique in adversarial litigation. Unlike Thucydides, the intervention of women through speech as well as in action is central to Herodotus' expansive concept of *nomos*, to be found in everyday interactions and negotiations rather than in forensic speeches.

CHAPTER 3: LIVING WITH THE RULES: HOW DOES *NOMOS* REGULATE FEMALE GENDER PERFORMANCE?

Introduction

In this chapter, I consider the way *nomoi* shape gender performance, and what it means to live with unwritten rules. One of the striking aspects of *nomoi* in the *Histories* is how many are grounded in customary practice, rather than enactment by an institution or civic body; in other words, there is no conscious law-creating act. For example, when Adrastus visits Croesus and asks to be purified according to the country's rules (κατὰ νόμους τοὺς ἐπιχωρίους, 1.35.1), those purity rules 'emerge, as it were, from nowhere', without formal enactment by an assembly.[321] Osborne gives the problem of pollution and its solution, purification, as a form of informal policing, a means whereby a community regulates itself, and where formal law is not applicable.[322] In many other cases, *nomoi* are social, sexual or religious practices based on precedent, for example, the fish-eating of some Babylonian tribes (1.200), the inherited role of keeper of sacred animals in Egypt (2.65.3), and the sale of children for export in Thrace (5.6.1).

Even where there is a conscious law-making act, Herodotus emphasises the functional, rather than the institutional aspect, in that groups change their *nomoi* in the light of circumstance. Lydian women, for example, work as prostitutes, so that they can earn a dowry, to enable them to get married; they then arrange their own marriages (τοῦ γὰρ δὴ Λυδῶν δήμου αἱ θυγατέρες πορνεύονται πᾶσαι, συλλέγουσαι σφίσι φερνάς, ἐς ὃ ἂν συνοικήσωσι τοῦτο ποιέουσαι: ἐκδιδοῦσι δὲ αὐταὶ ἑωυτάς, 1.93.4). This *nomos* is related as part of an overall

[321] Parker 2004: 63.
[322] Osborne 2011: 176-183.

narrative explaining how Lydia became increasingly impoverished in the period before they were enslaved by the Persians (1.94) and prostitution becomes an economic necessity with Lydia's fall from power. Similarly, amongst the Babylonians, a father was formerly not allowed to arrange his daughter's marriage, because there used to be a system of marriage auction (1.196), but poverty and loss of independence have led the Babylonians to invent a new *nomos* whereby a poor father prostitutes his daughter, 'so that the women are not treated unjustly or taken to another city' (ἵνα μὴ ἀδικοῖεν αὐτὰς μηδ' εἰς ἑτέραν πόλιν ἄγωνται, 1.196.1). These two cases, of Lydian and Babylonian *nomoi,* both illustrate how Herodotus depicts cultural practices linked to marriage as having the capacity to change, one of Hart's secondary rules in his concept of law, and a significant indicator that ethnic character, and associated gender performance, is mutable, not fixed. [323]

In this chapter, I consider those *nomoi* which create social expectations and obligations in everyday interactions, and are met with sanctions, if breached. I focus on the regulation of female gender performance, though this is often in a context where men violate *nomos*, thereby putting women's legitimate expectations at risk. I consider in what spheres the performance of normative gender roles is significant, and which rules refer to gender difference. I also ask what kind of sanctions are imposed when women are judged to break the rules, analysing two case studies involving Athenian men and women, where their actions can be interpreted as a form of informal policing, but I will argue, have a different resonance for Herodotus, as a non-Athenian. Finally, I consider the story of the Amazons, a group of women who reject the rules of gender performance, both Greek and non-Greek. I argue that Herodotus intends this to be a thought experiment on the rule of law, challenging his audience

[323] Thomas 2000: 113-7 on changeability of *nomos*: 'The Lydians' weakness is acquired' (113). Skinner 2012: 94-5 on the wealth and sophistication of the Lydia of Sappho, Alcman and Pindar.

to imagine a society which practises gender equality, but also contesting the place of the Amazon in Athenian gender ideology.

The rule of law applies in everyday life by regulating those activities and behaviours which are acceptable to the community, and subjecting those who breach the rules to social condemnation by both genders. A convincing display of gender requires a script (acquired through the socialisation process), props (appearance, speech and gesture) and an audience which understands and validates the performance.[324] These are the rules of conduct that function as *nomoi*, which, for the most part, are acquired and internalised through socialisation and education, not imposed by an external authority.[325] They combine the display of gender, that is, one's deportment and dress, with the conduct culturally sanctioned for men and women. An integral part of this process is how one is seen to perform gender; social judgments are made on this basis, validating or condemning performed identities through speech. In chapter 5, I will consider the performance of masculinity. In this chapter, I examine how *nomos* regulates female gender performance. What is it that people see in a woman? What do they hear when she speaks? What is judged to be appropriate conduct?

1. Appearance

There is a very powerful motif in the *Histories* of women's beauty, an attribute of *phusis*, provoking *erōs* in men and leading them to breach *nomos*, as I explore further in my next chapter. There are a number of occasions in the *Histories* where female beauty is put on display, in an effort to persuade. For example, Peisistratus dresses Phye, who was tall and good-looking (μέγαθος ἀπὸ τεσσέρων πηχέων ἀπολείπουσα τρεῖς δακτύλους καὶ ἄλλως

[324] Griffin 2018: 387-391.
[325] March and Olsen 1989: 22.

εὐειδής, 1.60.4) as the goddess Athena to persuade the Athenians to reinstate him as tyrant, and the Coan *pallake* displays herself in all her gold jewellery to Pausanias in an act of supplication, to save her from slavery, as a prisoner of war (αἰχμαλώτου δουλοσύνης, 9.76). However, in the first example, Herodotus as narrator describes the plan as 'extremely silly' (πρῆγμα εὐηθέστατον, 1.60.3) and expresses surprise that the Athenians were taken in by it, thereby distancing himself from the Athenian viewpoint, and in the second, the Coan *pallake* succeeds, not because of her display of wealth but because her father was 'very best guest friend' (ξεῖνος μάλιστα, 9.76.3) to Pausanias, who is also shown by Herodotus to respect the power of supplication.[326] The force of *xenia* between men, and Herodotus' characterisation of Pausanias as someone who respects his reciprocal obligations, therefore, is shown to be more significant than the woman's gender performance.

Sometimes, characters mistakenly think a combination of beauty (*phusis)* and industry *(nomos*) will persuade. The Paeonian brothers, Pigres and Mastyes, decide to put their sister, both tall and beautiful (μεγάλην τε καὶ εὐειδέα, 5.12.1) and industrious (carrying the water on her head, using her arm to lead the horse, and constantly turning her spindle: φέρουσα τὸ ὕδωρ ἐπὶ τῆς κεφαλῆς καὶ ἐπέλκουσα ἐκ τοῦ βραχίονος τὸν ἵππον καὶ στρέφουσα τὸν ἄτρακτον, 5.12.4) on display. They dress her in the best clothes they had (σκευάσαντες τὴν ἀδελφεὴν ὡς εἶχον ἄριστα, 5.12.2) and bring her to the attention of Darius, intending to indicate to the king that all Paeonian women were as hard-working (ἐργάτιδες, 5.13.3) as this woman. Gender performance here is linked directly to tyranny. The brothers desire to become tyrants of Paeonia, and they think that possessing such a remarkable woman will signify their

[326] Flower and Marincola 2002: 243.

power to Darius.[327] He is, indeed, amazed (θωμάζων, 5.13.1) by her gender performance, and this prompts him, as it will when he meets Intaphrenes' wife, to make further enquiries, to find out more. However, his response is not to make the brothers more powerful, but to remove all the Paeonians from their native land (ἐξαναστῆσαι ἐξ ἠθέων Παίονας ... καὶ αὐτοὺς καὶ τὰ τέκνα τε καὶ τὰς γυναῖκας αὐτῶν. 5.14.1), an act of cultural as well as geographical deracination.[328] Darius is impressed by the woman's industry (*nomos*) not her beauty (*phusis*) and the brothers find out too late that this tyrant's desire is 'not for outstanding women but for outstanding habits', according to Osborne, or conquest, in Christ's opinion.[329] Both views are preferable to the rather reductive assessment of Keuls, that the story shows 'what men want is sex and labour'.[330] In fact, the Paeonian brothers want to be tyrants and Darius wants the labour, which makes conquest profitable, not the sex. He interprets the woman's gender performance differently from the way the brothers anticipate. Like other characters in the *Histories*, they fail to 'read' a tyrant effectively, and find themselves subject to rules imposed by a tyrant, not able to manipulate circumstances to achieve the outcome they want.

In this story, the woman is portrayed as a pawn in her brothers' game, whereas in the story of Nitetis, another extremely tall and beautiful woman (κάρτα μεγάλη τε καὶ εὐειδὴς, 3.1.3), she refuses the gender performance expected of her. Amasis, who has killed her father Apries and whole family, tries to pass her off as his daughter, dressing her up in fine clothes and gold jewellery (κοσμήσας ἐσθῆτί τε καὶ χρυσῷ, 3.1.3) to avoid having to send his own child. He does this because he knows that Amasis intends to make her his *pallakē* not his wife (3.1.2).

[327] Osborne 2007: 92-3.
[328] Hornblower 2013: 106.
[329] Osborne 2007: 92-3; Goff 2004: 54 for *nomos* and *phusis* point; Hornblower 2013: 103-7. Christ 2013: 216.
[330] Keuls 1985: 229.

Nitetis, however, alerts Cambyses to the deceptiveness of appearances, when she tells him that she is not who he thinks she is (3.1), prompting his attack on Egypt.

The performance of female beauty, therefore, is shown to be an unreliable tool in the hands of men who calculate it will achieve a particular outcome. Moreover, appearances can be deceptive. The two stories, of the Minyans' escape from Spartan prison in women's clothing with their wives' assistance (4.146), and the murder of Persians by Macedonians both depend on men being able to pass themselves off as women. The Persian delegation to Macedonia explains that it is the Persian *nomos* to bring their *pallakai* and wives in to join the company at the end of a meal. Amyntas says that is not the Macedonian rule: they keep men and women separate (νόμος μὲν ἡμῖν γε ἐστὶ οὐκ οὗτος, ἀλλὰ κεχωρίσθαι ἄνδρας γυναικῶν, 5.18.3). However, since the Persians are now their masters (δεσπόται), they obey, and the beautiful women (γυναῖκας εὐμόρφους, 5.18.4) are sexually assaulted by the Persians. Alexander, however, arranges for the men thereafter to disguise themselves in women's clothes, and kill the entire Persian delegation (5.20.5). This trick only works because the men can convincingly cross-dress as women.[331]

These stories, therefore, unsettle a narrative in which female beauty is innate, rather than performed, since men can perform as women, if necessary, just as Artemisia, to be considered in chapter 5, performs as a man. Appearances can be deceptive, as indicators of gender. However, it is through female speech, as the story of Nitetis shows, when she rejects the impersonation required of her, that women gain some agency.

[331] Hornblower 2013: 109.

2. Speech

The role of female speech in the *Histories*, and its relationship to *nomos*, has not been addressed systematically by scholars. Dewald, for example, divides women into 'active' and 'passive' categories but does not draw a correlation with speech. I note that, of the 128 instances of 'passive' women in the appendix to her chapter on 'Women and Culture in Herodotus' *Histories*', only six include speech, whereas, of the 166 'active' women, 69 include speech.[332] This suggests that, in analysing the role that women play in the *Histories*, we need to consider their speech in connection with their actions or passivity. Phaedymia, daughter of the Persian Otanes, is presented by Dewald as an 'individual passive woman presented in a family context subject to external aggression.'[333] However, her communication with her father, in both direct and indirect speech (3.68-9) reveals the difficulties and negotiations involved in her unmasking of the Magus, posing as Smerdis, son of Cyrus. This leads to the revolt of the seven against the Magi and shows her as a woman of some bravery, aware of the risks she is being asked to take. She shows some agency within a coercive regime, obeying her father despite the risk that her husband might annihilate her (ὡς ἀιστώσει μιν, 3.69.4).

In my last chapter, I argued that we need to distinguish between the various elements of legal proceedings. We firstly need to find out which rule is engaged and in the *Histories* we are more likely to discover that through speech rather than through a written statute; the rule, then, has to be interpreted in the light of available evidence, and, finally, a judgment has to be made. In this chapter, therefore, I identify and analyse different types of female speech, and

[332] Dewald 2013b: 175-6. I do not include her 45 references to the Pythia and 1 to the oracle of Dionysus (7.111) because these women function in Herodotus' narrative as mouthpieces of a god. They perform an important role, therefore, but it would be misleading to include them in this section on female speech.
[333] Dewald 2013b: 175.

show this as law in action. Candaules' wife for example, both declares the rule, and comes to a judgment on the basis of her interpretation of what she knows and sees. I will also distinguish between those cases where violation of *nomos* is being punished, and those where women are involved in preserving the *oikos*, regulating their community and acting as agents of social control.

2.1 Teaching the rules

In chapter 1, I showed the Carian women socialising their daughters through creating a *nomos*, enforced by oaths, which governs speech and practice. There are a number of examples in the *Histories* of a social practice being communicated through the articulation and transmission of a *nomos*. For example, the daughters of Danaus brought the rite of the Thesmophoria out of Egypt and taught it to the Pelasgians (αἱ Δαναοῦ θυγατέρες ἦσαν αἱ τὴν τελετὴν ταύτην ἐξ Αἰγύπτου ἐξαγαγοῦσαι καὶ διδάξασαι τὰς Πελασγιώτιδας γυναῖκας, 2.171.3), a story, like that of the founding of oracles at Dodona and Siwa, which functions as a foundation myth. Meanwhile, Herodotus tells of how the Athenian women bore many children, and educated their sons in Attic speech and the Athenian way of life (ὡς δὲ τέκνων αὗται αἱ γυναῖκες ὑπεπλήσθησαν, γλῶσσάν τε τὴν Ἀττικὴν καὶ τρόπους τοὺς Ἀθηναίων ἐδίδασκον τοὺς παῖδας, 6.138.2), when abducted by Pelasgians. These women, therefore, assert their natal rules, as Scyles' mother does; being from Istria and not native to Scythia, she taught her son to speak and read Greek (ἐξ Ἰστριηνῆς δὲ γυναικὸς οὗτος γίνεται καὶ οὐδαμῶς ἐγχωρίης: τὸνἡ μήτηρ αὕτη γλῶσσάν τε Ἑλλάδα καὶ γράμματα ἐδίδαξε, 4.78.1).[334] These women teach *nomoi* as a way of resisting the rules of the society they have been forced to join: the Carian women, as a form of protest at forced marriage, the Athenian women, as a

[334] Hornblower and Pelling 2017: 299.

means of resisting their Pelasgian captors, Scyles' mother, who brought him up to incline to Greek not Scythian ways (4.78.3). Was the socialisation of children into a dominant culture recognised as such? It is possible that Herodotus' sources saw female performances of gender as natural rather than learned forms of behaviour, that is, based on *phusis* rather than *nomos*, but we have already seen that female appearance is a misleading indicator of gender.

How is the essential difference between male and female expressed in speech? Herodotus, as narrator, does not express a viewpoint with regard to female nature, though several of his characters use the rhetoric of female cowardice and inferior strength, which relies on a gender ideology based on female inferiority. Croesus persuades Cyrus to disarm the Lydians, by changing their gender performance from male to female (1.155.4), Herodotus shows Mitrobates (3.120.3), Atossa (3.134.2) and Artemisia (8.68α) all using the rhetoric as part of their persuasive strategy, and Xerxes explains defeat or caution (in the case of Artabanus, 7.10δ2) in gender terms; it must be based on the female trait of cowardice, which is the polar opposite of the Spartan *nomos* of win or die.

In all these examples, however, Herodotus uses speech to identify a disjuncture between what a person says and how that person is depicted in the overall narrative. Croesus as well as Cyrus are shown to underestimate Tomyris, since she performs a more effective masculine role than Cyrus, both as a speaker and as a fighter. As regards Artemisia, in the first speech (8.68) Herodotus gives to her, she praises her own performance at Euboea whilst criticising the role of other allies. Herodotus, however, does not reflect that account in the narrative concerning the battle. Her speech, therefore, is part of his characterisation of her as boastful and well-practised in the rhetoric of praise and blame, which, I will argue, forms part of the

andreia that Herodotus attributes to her (7.99.1). Artabanus is punished by exclusion from the masculine arena of war but gives better strategic advice than Mardonius. In this way, Herodotus subtly undermines the essentialist position that women are by nature inferior, by undercutting the assumptions of those who proclaim the rhetoric of female inferiority.

2.2 Violating the rules

A number of scholars have highlighted the role of women in defending the rule of law against those men who either have violated, or are at risk of violating, *nomos*.[335] In the story of Candaules, his wife and Gyges (1.8-12) a breach of *nomos* meets a coercive response. In exposing his wife to Gyges, Candaules violates marital convention as well as royal status. Her response asserts her rights to privacy in both roles and leads to significant dynastic change. A combination of focalisation and speech reveals cause and effect in this story. Candaules is motivated by an irrational passion, based on his perception of his wife's beauty and speaks to Gyges with misplaced confidence. Gyges speaks a warning: 'I beg you, don't require me to act unlawfully' (σέο δέομαι μὴ δέεσθαι ἀνόμων, 1.8.4), but is motivated by fear of the consequences of disobeying his master. Candaules' wife responds to an act of objectification with a spoken ultimatum: 'You have seen me naked and broken the rules' (σε τὸν ἐμὲ γυμνήν θεησάμενον καὶ ποιήσαντα οὐ νομιζόμενα, 1.11.3). Her sexual exposure breaks a marital rule and her speech act is an order backed up by a threat. She passes judgment, forcing Gyges to choose between two options, to remedy the king's breach of *nomos.* She is unusual, however, in being a woman who exercises the power of life and death, which is usually reserved for the male tyrant.

[335] Blok 2002: 227; Dewald 2013b: 157; Fisher 2002: 207; Flory 1987: 33; Lateiner 1989: 127; Gould 1989: 143.

In the following story, a breach of *nomos* is revealed through a conversation between Peisistratus' wife, and her mother:

> [Peisistratus] had sex with [his wife] not in accordance with the rules. At first she kept it secret, but then told her mother (who may or may not have made inquiries), and she told her husband
>
> ἐμίσγετό οἱ οὐ κατὰ νόμον. τὰ μέν νυν πρῶτα ἔκρυπτε ταῦτα ἡ γυνή, μετὰ δὲ εἴτε ἱστορεύσῃ εἴτε καὶ οὔ φράζει τῇ ἑωυτῆς μητρί, ἣ δὲ τῷ ἀνδρί (1.61.2)

Peisistratus' wife, married as part of a negotiated alliance between two powerful men in which she has no say, nevertheless expects that the marriage will produce children; the attempt to thwart those expectations has political as well as personal consequences. Herodotus tells us Peisistratus agreed to the marriage, after he had become tyrant, but did not want to have further children (οὐ βουλόμενός οἱ γενέσθαι ἐκ τῆς νεογάμου γυναικὸς τέκνα, 1.61.1), a unilateral decision which compromised the legitimate expectation of children within marriage. Peisistratus' failure to perform this particular marital rule comes to light in this conversation between the wife and her mother, who tells her husband Megacles, and the alliance with Peisistratus breaks down. Clearly, Megacles sees the marriage as creating a kinship bond which Peisistratus is thwarting by acting οὐ κατὰ νόμον. In gender terms, therefore, the man acts, but women, the mother and the daughter, are shown, through speech, to influence events beyond the *oikos*, because of legitimate expectations within the *oikos.*

Both these stories, therefore, illustrate through gender themes, the normative ideal of the rule of law which sets boundaries on human behaviour and indicate that the *oikos* is a sphere where the performance of normative gender roles matters. In other instances, women are

shown to reinforce other obligations, in particular the preservation of the royal *oikos*. Cambyses' sister/wife, for example, accuses her husband of 'stripping Cyrus' house as bare as this lettuce' (3.32.4), because he has already killed his brother Smerdis. Periander's daughter also warns her brother Lycophron of the risk his father's *oikos* will be destroyed, if he does not return home, using a contrast between legal principles of fairness and justice in an attempt to persuade:

> 'Child, would you want the power to fall to others, and our father's house destroyed, rather than to return and have it yourself? Come home and stop punishing yourself ... Many place fairness before justice, and many throw away their paternal inheritance through pursuing their maternal one'
>
> 'ὦ παῖ, βούλεαι τήν τε τυραννίδα ἐς ἄλλους πεσεῖν καὶ τὸν οἶκον τοῦ πατρὸς διαφορηθέντα μᾶλλον ἢ αὐτός σφεα ἀπελθὼν ἔχειν; ἄπιθι ἐς τὰ οἰκία, παῦσαι σεωυτὸν ζημιῶν ... πολλοὶ τῶν δικαίων τὰ ἐπιεικέστερα προτιθεῖσι, πολλοὶ δὲ ἤδη τὰ μητρώια διζήμενοι τὰ πατρώια ἀπέβαλον' (3.53.3-4)

The consequence of speaking out for Cambyses' wife/sister is that she and her unborn child are killed, and Periander's daughter fails in her mediation attempts. Both stories, therefore, illustrate a theme found elsewhere in the *Histories* of the self-destructive *oikos*, which I explore further in the next chapter. Moreover, in both these instances, the conversational exchanges illustrate a power imbalance, whereby advice is not heeded, a pattern which is repeated elsewhere in the *Histories*.[336]

[336] Pelling 2006: 104-106.

Another breach of *nomos* is revealed in speech by Phaedymia. Her father Otanes, one of the co-conspirators with Darius, suspects that the person who succeeded Cambyses as king is not Smerdis, son of Cyrus, but one of the Magi. He asks her, now married to this man, to find out who he is, either directly or via Atossa.

> The message his daughter sent in reply said: 'I can't talk to Atossa, or meet any of the women who live together, because at the very beginning of his reign this man, whoever he is, separated us by assigning each of us different quarters'.
>
> ἀντιπέμπει πρὸς ταῦτα ἡ θυγάτηρ 'οὔτε Ἀτόσσῃ δύναμαι ἐς λόγους ἐλθεῖν οὔτε ἄλλην οὐδεμίαν ἰδέσθαι τῶν συγκατημενέων γυναικῶν. ἐπείτε γὰρ τάχιστα οὗτος ὥνθρωπος, ὅστις κοτὲ ἐστί, παρέλαβε τὴν βασιληίην, διέσπειρε ἡμέας ἄλλην ἄλλῃ τάξας.' (3.68.5)

This speech reveals that the gender norm, which complements the Persians' *nomos* of polygamy,[337] is that women live together in the women's quarters and communicate with each other.[338] The Magus disrupts this female space and female discourse through his actions in isolating the women from each other, he acts against precedent.

Another woman who clearly warns against violating *nomos* is the priestess to Athena Polias to Cleomenes:

[337] Every Persian marries many lawful wives, and keeps still more *pallakes* (γαμέουσι δὲ ἕκαστος αὐτῶν πολλὰς μὲν κουριδίας γυναῖκας, πολλῷ δ' ἔτι πλεῦνας παλλακὰς κτῶνται (1.135).

[338] I follow Asheri 2007: 466 in translating τῶν συγκατημενέων γυναικῶν as 'the women who live together' in the women's quarters. Waterfield translates the phrase as 'handmaidens to Atossa', a more restrictive reading, but this does not negate the force of διέσπειρε ἡμέας ἄλλην ἄλλῃ τάξας; the women are separated from each other.

> ‘Go back, Lacedaemonian stranger, and do not enter the holy place since it is not lawful that Dorians should pass in here’
>
> ὦ ξεῖνε Λακεδαιμόνιε, πάλιν χώρεε μηδὲ ἔσιθι ἐς τὸ ἱρόν: οὐ γὰρ θεμιτὸν Δωριεῦσι παριέναι ἐνθαῦτα (5.72)

In the priestly hierarchy, she outranked all other priests, and ‘is only standing up for principles that her male fellow citizens would have endorsed’.[339] Cleomenes does not listen to the authoritative speech of this priestess. However, on another occasion, he does heed the political advice of his daughter Gorgo:

> ‘Father, the stranger [Aristagoras] will corrupt you, unless you leave him and go away’. Cleomenes was pleased with the child’s counsel and went into another room
>
> ‘πάτερ, διαφθερέει σε ὁ ξεῖνος, ἢν μὴ ἀποστὰς ἴῃς’. ὅ τε δὴ Κλεομένης ἡσθεὶς τοῦ παιδίου τῇ παραινέσι ἤιε ἐς ἕτερον οἴκημα (5.51.2-3)

Aristagoras’ promise that ‘you could rival Zeus in riches’ (τῷ Διὶ πλούτου πέρι ἐρίζετε, 5.49.7), encouraging Cleomenes to breach *nomos* by ignoring the boundary between mortals and gods, is ‘the clearest signal in the speech that Aristagoras goes much too far’.[340] This example shows Gorgo, though female and a child, exercising some authority through speech.[341]

[339] Hornblower 2013: 214-5, with reference to Parker 1997: 4.
[340] Hornblower 2013: 166.
[341] Zali 2015: 43-44. Cartledge 2002: 106 ‘it is plausible to represent a child saying this’.

These examples, therefore, show women defending the rule of law against those men who either have violated, or are at risk of violating, *nomos*, but it also shows that speaking truth to power can be a risky undertaking.

2.3 Gender norms and expectations

Both men and women voice gender norms and expectations, which is an important way to reinforce the norms of gender performance. In the story of Cleobis and Biton, we have seen the Argives, male and female, praise gender qualities which are valued, and thereby highlight gender distinctiveness (1.31.3). Atys meanwhile anticipates censure from the community and from his wife if Croesus prevents him performing a masculine role in the hunt (1.35.3). Atossa's appeal to Darius to pursue the Persian *nomos* of expansionism includes an injunction for him to prove his manly qualities:

> It is appropriate for a man who is both young and the master of great wealth to be seen to accomplish something significant, so that the Persians know that they are ruled by a real man
>
> οἰκὸς δὲ ἐστὶ ἄνδρα καὶ νέον καὶ χρημάτων μεγάλων δεσπότην φαίνεσθαί τι ἀποδεικνύμενον, ἵνα καὶ Πέρσαι ἐκμάθωσι ὅτι ὑπ᾽ ἀνδρὸς ἄρχονται (3.134.2)

Atossa's persuasiveness is part of what makes her 'all-powerful' (εἶχε τὸ πᾶν κράτος, 7.3.4). In chapter 5, I will show how this gender ideology is used as a motivating factor in war, by women as well as men.

My analysis shows that other social norms are revealed through speech, often in situations where the norm is being challenged or disrupted, for example, the norm of a female

community within the Persian royal *oikos* referred to above. Elsewhere in the *Histories* the contrast between Persian and Greek rules on gender segregation is highlighted through speech. The Persians tell Amyntas: 'It is our rule in Persia to bring in also the *pallakai* and wives to sit by the men after the giving of any great banquet (ἡμῖν νόμος ἐστὶ τοῖσι Πέρσῃσι, ἐπεὰν δεῖπνον προτιθώμεθα μέγα, τότε καὶ τὰς παλλακὰς καὶ τὰς κουριδίας γυναῖκας ἐσάγεσθαι παρέδρους, 5.18.2). Amyntas replies: 'We have no such rule, Persians. Among us, men and women sit apart' ('ὦ Πέρσαι, νόμος μὲν ἡμῖν γε ἐστὶ οὐκ οὗτος, ἀλλὰ κεχωρίσθαι ἄνδρας γυναικῶν, 5.18.3). Herodotus uses speech to draw attention to these conflicting *nomoi*, but also adding a note of irony to the outcome, in that the Macedonians deceive the Persians by obeying this rule in practice (they remain men) but breaching it in performance terms (they look like women).

The story of the Amazons is also about conflicting *nomoi*. They reject the performance expected of Scythian women who 'stay in their wagons and do women's work, and do not go out hunting or anywhere else' (ἔργα δὲ γυναικήια ἐργάζονται μένουσαι ἐν τῇσι ἁμάξῃσι, οὔτ᾽ ἐπὶ θήρην ἰοῦσαι οὔτε ἄλλῃ οὐδαμῇ, 4.114.3 and are like all other women in the *Histories*, whose place is in the *oikos*, save in Egypt, where women buy and sell, and men stay at home and weave (ἐν τοῖσι αἱ μὲν γυναῖκες ἀγοράζουσι καὶ καπηλεύουσι, οἱ δὲ ἄνδρες κατ᾽ οἴκους ἐόντες ὑφαίνουσι, 2.35.2).

Herodotus, therefore, shows that women have a role through speech in enforcing *nomos*, when men break the rules, but also in transmitting gender norms and expectations, which may become contested in circumstances of social or cultural change or disruption.

2.4 Interpreting the rules

As well as declaring *nomos* in speech, women also have a role in interpreting events to establish whether *nomos* has been broken. Caudaules' wife for example, sees Gyges in her bedroom but correctly interprets what she sees as Candaules' fault, whereas Amestris wrongly blames Artaynte's mother, rather than Artaynte for the gift of a cloak to Xerxes (9.110.1).[342] When Oroetes conceives an unlawful desire to kill Polycrates (ἐπεθύμησε πρήγματος οὐκ ὁσίου, 3.120.1), Polycrates' daughter correctly interprets a dream to foresee the risk to her father, and tries, unsuccessfully to warn him:

> After this vision she used all means to persuade him not to go on this journey to Oroetes; even as he went to his fifty-oared ship she prophesied evil for him. When Polycrates threatened her that if he came back safe, she would long remain unmarried, she answered with a prayer that his threat might be fulfilled: for she would rather, she said, long remain unmarried than lose her father.
>
> ταύτην ἰδοῦσα τὴν ὄψιν παντοίη ἐγίνετο μὴ ἀποδημῆσαι τὸν Πολυκράτεα παρὰ τὸν Ὀροίτεα, καὶ δὴ καὶ ἰόντος αὐτοῦ ἐπὶ τὴν πεντηκόντερον ἐπεφημίζετο. ὁ δέ οἱ ἠπείλησε, ἢν σῶς ἀπονοστήσῃ, πολλόν μιν χρόνον παρθενεύεσθαι. ἡ δὲ ἠρήσατο ἐπιτελέα ταῦτα γενέσθαι: βούλεσθαι γὰρ παρθενεύεσθαι πλέω χρόνον ἢ τοῦ πατρὸς ἐστερῆσθαι (3.124)

Polycrates' daughter, therefore, like Cambyses' wife/sister and Gorgo are all female characters in the *Histories* who speak truth to power: other examples are Tomyris to Cyrus (1.206; 1.212), whose words have a Solonian echo, Nitetis to Cambyses (3.1), and Artemisia

[342] Baragwanath 2008: 96

to Xerxes (8.68; 8.102) who gets a better reception from the king than Artabanus, but still fails to persuade.

2.5 Passing judgment

If we analyse these forms of speech in legal terms, the first, by Candaules' wife, is an order backed up with a threat. She passes judgment, forcing Gyges to choose between two options, to remedy the king's breach of *nomos*. Her judgment, however, is not identical to that a king who assumes the right to kill on the basis of his personal authority. Rather, she seeks a remedy for herself, for the breach of *nomos*; since only the king may see her naked, either Gyges must die or become king himself. Moreover, by making Gyges the agent in Candaules' death, she shifts blame for the breach of *nomos* involved in killing the king onto him. However, in adopting a quasi-judicial function, exercising the power of life and death, she is the exception rather than the rule. Women, for the most part, have to persuade rather than pronounce judgment, negotiate rather than command, advise rather than direct.

To summarise: it is through speech that Herodotus shows women who protest against violation of *nomos*, but also who reinforce gender norms and expectations. In my case studies I will develop these two aspects, since status and power within the *oikos* are key indicators of female agency or lack of it. Herodotus, however, at times confounds our expectations, for example, with a female slave, Cyno, whose story I analyse in chapter 4. Whilst appearances, and therefore female beauty, can be deceptive, Herodotus signals through female speech that women are involved not only in policing breaches of *nomos* but also in regulating communal activities.

3. Contesting the rules

Finally, there are women in the *Histories* who challenge the rules. Argeia, for example, refuses to identify to the Spartans which twin was born first, because she wants to thwart the rule of succession which makes the elder boy king (6.52.4) and the mother of Demaratus makes a spirited defence of his paternity, when this is questioned in court by Leotychides (6.65.4; 6.69.4). I analyse both these stories in the next chapter. The stories of Athenian women, firstly those who kill the survivor of the Aegina campaign (5.88) and secondly those who stone Lycides' wife and children to death (9.5) are examples, I will argue, of transgressive behaviour which show Herodotus' critical distance from Athenian ideology. The story of the Athenian women, however, raises a significant question to do with appropriate behaviour as judged by Athenian men but problematised through speech. The story of the Amazons who reject women's work emphasises by opposition the central role of the *oikos* in both Greek and non-Greek societies.

3.1 The Aeginetan-Athenian dispute 5.82-89

Following the Aeginetan-Athenian war in the 6th century BCE, only one Athenian gets back alive to Attica. He, however, is set upon by the wives of the Athenian men who had died, who thought it terrible that he should be the only one to survive (δεινόν τι ποιησαμένας κεῖνον μοῦνον ἐξ ἁπάντων σωθῆναι, 5.87); they 'stabbed him to death with the brooches which fastened their clothes, while each of them asked him where her husband was' (τὸν ἄνθρωπον τοῦτον ... κεντεύσας τῇσι περόνῃσι τῶν ἱματίων εἰρωτᾶν ἑκάστην αὐτέων ὅκου εἴη ὁ ἑωυτῆς ἀνήρ, 5.87). The Athenian men found what the women had done even more shocking than the disaster on Aegina, but the only punishment they could come up with for the women was to make them change over to the Ionian style of clothing which did not need fastening with a

brooch (Ἀθηναίοισι δὲ ἔτι τοῦ πάθεος δεινότερόν τι δόξαι εἶναι τὸ τῶν γυναικῶν ἔργον. ἄλλῳ μὲν δὴ οὐκ ἔχειν ὅτεῳ ζημιώσωσι τὰς γυναῖκας, τὴν δὲ ἐσθῆτα μετέβαλον αὐτέων ἐς τὴν Ἰάδα ... ἵνα δὴ περόνῃσι μὴ χρέωνται, 5.87.3).

In my introduction, I identified dress as one of the 'props' which support a performance of gender and which can be a way for male authority to control women. In this story, both Athenian and Aeginetan men impose a change of dress on their women. For the Athenian men it is a punishment for transgressive behaviour by Athenian women, whereas the Aeginetan men introduce it as a new *nomos* for their women. I argue that Herodotus intends us to contrast the behaviour of the Athenian women, which goes far beyond acceptable female conduct, with that of the Argive and Aeginetan women, whose dress mirrors their role in ritual and cult, and reflects conduct which does not breach *nomos*. Herodotus highlights how the Athenian women breach *nomos*, by showing conduct which is violent and unlawful. However, he also problematises this by showing, through indirect speech, their loyalty to husbands, in contrast with the Carian women. Moreover, this story, like the story of the Athenian women who stone to death Lycides' wife and children, can be read as emphasising the power of women to police male behaviour, operating, therefore, as a form of social control, a reading I will question.

For some scholars, this is a mythical story to provide an aetiological reflection on current cultural practice in 5th century BCE.[343] Others, like Irwin and Greenwood, are more circumspect: 'It is unclear whether such aggressive oppositional self-definition amongst

[343] Haubold 2007: 226; Figuera 1985: 72 'pseudo-aetiology of Aeginetan provenance ... otiose, farfetched and polemical'. Schaps 1982: 207 'may well be apocryphal but the bitterness of the women doubtless had real parallels'.

Greek *poleis* is historical or a retrojection from 5th century BCE'.[344] Dewald identifies misogynistic folk motifs within the story, including the Pentheus motif, but, she argues, the Athenian women are not mad but grief stricken, infected by the violence of war and, through their actions, giving a political response to the destructive effects of war.[345] Hornblower points out the parallel with Euripides' *Hecuba*, and notes a pattern of symmetrical aetiological reversal in that the Aeginetan and Argive women lengthen their pins as a consequence of the Athenian women's change of dress.[346]

My interpretation accords with Hornblower, in that I read this story and the change of *nomos* as part of Herodotus' explanation for the hostility between Aegina and Athens in his day, by which time Aegina was subject to Athens and had suffered huge losses. In those circumstances, we would expect the animosity between the two *poleis* to be reflected in the stories they tell about the past.[347] However, in this story, the women's anger is directed at the Athenian survivor, not the Aeginetans or Argives who have killed their husbands. This is the only instance in the *Histories* where this reaction (δεινὸν ποιέεσθαι) is attributed to a group of women.[348] In some cases, the phrase expresses feelings of resentment or anger at rule by another: for example, the Persians at rule by the Medes (1.127.1), which leads them to seek independence under Cyrus; the Lydians at Gyges' succession to the throne (1.13.1) after which they consult the oracle and learn of delayed vengeance for the killing of Candaules; Theras at rule by his nephews (4.147.3) which motivates him to leave Sparta for Thera;

[344] Irwin and Greenwood 2007: 32. See also Dunbabin 1936-7: 86 on the motive for the change of dress being 'improbable but not ludicrous or insufficient'.
[345] Dewald 2013b:158.
[346] Hornblower 2013: 241 draws a parallel with 1.82; when the Argive men cut their hair in response to defeat at Thyraea, the Spartans grow theirs.
[347] Figuera 1985: 59, 74; Dunbabin 1939: 83 on change of *nomos* resulting from Aeginetan/Argive victory over Athenians.
[348] Powell 1938: 80 gives 13 examples of the construction δεινὸν ποιέεσθαι with an object in the accusative meaning 'consider terrible i.e.to be indignant at' (his translation).

Dorieus at Cleomenes becoming king, which leads him to join in a colonising expedition to Libya (5.42.2).[349] In all these cases, the reaction (anger or humiliation) is a precursor to a significant change of events, and reflects the 'internal' view of individuals and groups; it is part, therefore, of Herodotus' historical explanation for events, and is presented as an understandable motivation.[350]

Is this the case with the Athenian women, who are shown to respond to defeat by punishing the survivor? Forsdyke regards it as 'plausible' that women might punish a social offender, but it is not clear in what sense this Athenian has committed an offence, making the analogy with Euripides' *Hecuba* inappropriate.[351] The implication is that he is being treated as a traitor or coward, an action which suggests a parallel with the possibly apocryphal story of the Spartan women who told their men to return with or on their shields (Plutarch *Moralia* 241f16). In an Athenian context, is he being held responsible for the death of husbands, as a deserter who has broken his ephebic oath by abandoning the man beside him?[352] Is he a coward who is held responsible for the death of these women's husbands and therefore liable to be punished?

[349] Baragwanath 2008: 165-7 on stories of Doreius and Theras foregrounding twin desires for power and land.
[350] Other examples are: Zopyrus at the Assyrians laughing (καταγελᾶν, 3.155.2) at the Persians, the Persians at the small number of ships which had destroyed them at Artemisium, (8.15.1), and the Athenians at being attacked by Artemisia at Salamis (8.93.2). It can also express a response to failure, as in the rebellion by the survivors of Apries' campaign against Cyrene (2.161.4) or to insubordination, as with Pausanias and Euryanax in relation to Amompharetus, the Spartan who refused a tactical order to retreat (9.53.3).
[351] Forsdyke 2012: 228n.84. Mossman 1995; 189-190 - in *Hecuba* the punishment of Polymestor through blinding and the death of his sons fits his crime; he has betrayed the principles of *xenia* in killing Polydorus. Mutilation, moreover, is a barbarian practice (Mossman 1995: 190; E. Hall 1989: 25-7; 103-5; 158-9).
[352] Rhodes and Osborne 2003: 440-441.

This does not accord with the Athenians' own explanation for the defeat, which was that the Athenians went out of their mind and began killing each other as if they were enemies (ὑπὸ τούτων ἀλλοφρονῆσαι, παθόντας δὲ τοῦτο κτείνειν ἀλλήλους ἅτε πολεμίους, 5.85.2). This was no Thermopylae, where Athenian men took a heroic stand against a superior foe, but a result of madness brought on by thunder and earthquake. This explanation from the Athenians is understandable as an alternative to the Aeginetan account, which called it a military defeat, but implies divine displeasure, thunder and earthquake being ill divine omens, indicating sacrilege.[353] As Haubold says, 'their actions cannot be explained in terms of rules that apply to normal human behaviour'.[354] The same is surely true of the actions of the Athenian women, who break the rule that killing in war is for men, just as their husbands have offended the gods. However, at the same time as they act in this transgressive way as a group, they assert their position, their identity, as wives, as each one asks for her own husband (ὅκου εἴη ὁ ἑωυτῆς ἀνήρ, 5.87.2) in contrast to the Carian women who refuse such identification with their husbands. This brings home to us their loss but also creates a sense of dislocation in that these women proclaim their loyalty to their husbands whilst committing this terrible deed. Moreover, whilst they act as a group, they speak as individuals, each one asking for her own husband.

Haubold reads this story as a historical change from the sacred aetiologies of the distant past to the cultural politics of present day society.[355] He interprets women as the driving force behind cultural change, whose action 'unleashes the potential for female agency', shifts historical agency programmatically from gods and/or men to women and ushers in an 'age of

[353] Holland 2013: 681; Hornblower 2013: 239 'divinely induced insanity after sacrilege' and 240 'to a pious Greek observer it would imply an admission of the injustice of their cause'.
[354] Haubold 2007: 239.
[355] Haubold 2007: 229.

women, of clothes, of cultural politics', when cultural signifiers become unstable.[356] I question this interpretation, because it minimises the clear breach of the rules of female conduct, and the 'internal' view which Herodotus shows by focalising the response of Athenian men, who disagree with the women's verdict. They view the women's actions in killing an Athenian man as more terrible than the disaster on Aegina (ἔτι τοῦ πάθεος δεινότερόν τι δόξαι εἶναι τὸ τῶν γυναικῶν ἔργον, 5.87.3). Haubold argues that δεινότερόν can mean 'more powerful', 'more important', as well as having a negative connotation.[357] However, I can find no example of such use in the *Histories* and moreover, it does not fit this context. The 'internal' view, which Herodotus attributes to the Athenian men leads them to punish the women, imposing a new dress code which disarms them, by removing their weapons. I also cannot agree with Dewald's reading of this passage, that men and women share a set of social values, and both are infected with the violence of war.[358] The men in this story are enforcing *nomos*, restraining women who have disregarded social values, and thereby put themselves in opposition to men.

How effective is this, though? In this story, male authority is asserted through the imposition of a new dress code on women, but we are told that the men 'had no other way to punish the women' (ἄλλῳ μὲν δὴ οὐκ ἔχειν ὅτεῳ ζημιώσασι τὰς γυναῖκας, 5.87.3), suggesting weakness not strength. Moreover, the women have performed a masculine role in killing the man who survives, making them rather like the Spartan women who tell their men to return with or on their shield. Who is the brave person now?, Herodotus asks us. This story shows the disruptive effect of war, reversing gender roles.

[356] Haubold 2007: 241-4.
[357] Haubold 2007: 242.
[358] Dewald 2013b: 158.

Hornblower highlights the way in which Herodotus presents the early history of Aegina, Athens, Epidaurus and Argos in terms of cult (of Auxesis and Damia) and cult objects (pins) and practices, including the Aeginetan women's abusive choruses.[359] I argue that we should consider this passage in the light of the change of *nomos* imposed on the Aeginetan and Argive women:

> The Argives and the Aeginetans passed a law that the pins of brooches in their respective countries be half as long again as the standard measurement, and that women visiting the shrine of the two goddesses make a particular point of dedicating their brooches. It was also laid down that no Attic pottery, and nothing else from Attica either, be taken into the shrine, and that in the future, by law, no one was to drink from any but locally sourced vessels.[360]
>
> τοῖσι δὲ Ἀργείοισι καὶ τοῖσι Αἰγινήτῃσι καὶ πρὸς ταῦτα ἔτι τόδε ποιῆσαι[1] νόμον εἶναι παρὰ σφίσι ἑκατέροισι τὰς περόνας ἡμιολίας ποιέεσθαι τοῦ τότε κατεστεῶτος μέτρου, καὶ ἐς τὸ ἱρὸν τῶν θεῶν τουτέων περόνας μάλιστα ἀνατιθέναι τὰς γυναῖκας, Ἀττικὸν δὲ μήτε τι ἄλλο προσφέρειν πρὸς τὸ ἱρὸν μήτε κέραμον, ἀλλ᾽ ἐκ χυτρίδων ἐπιχωριέων νόμον τὸ λοιπὸν αὐτόθι εἶναι πίνειν (5.88.2)

Here a change of *nomos* supports and reflects women's ritual and cult roles, as well as displaying their difference from the Athenian women, through their larger pins, and prohibiting all but locally-sourced vessels in shrines. Aeginetan women are associated throughout this story with cult; the sacrifice to the statues of Damia and Auxesis, and the

[359] Hornblower 2013: 233-6.
[360] Holland's translation.

abusive choruses performed by women, against women (κακῶς δὲ ἠγόρευον οἱ χοροὶ ἄνδρα μὲν οὐδένα, τὰς δὲ ἐπιχωρίας γυναῖκας, 5.83.3).[361] Their dedication of pins involves women in memorialising the defeat of the Athenians.

This story also illustrates how something which appears to be a cultural change may in fact also have wider significance, as part of people's explanation of the past, but it also shows how cultural change reinforces the experience of victory or defeat and perpetuates the memory of that conflict. The dress of Athenian women becomes a marker of difference from other Greek women, an assertion of Athenian identity as well as gender identity.[362] However, I think we are also intended to contrast the Athenian women who breach *nomos*, with the Aeginetan and Argive women, who integrate this cultural change in their female abusive choruses, acting out in ritual the murderous actions of the Athenian women, dedicating their pins to the cult of Damia and Auxesia, and displaying their *polis*' victory over Athens in their dress.[363] All women had previously worn the same (Dorian) dress; now they can be distinguished from each other. Dress, therefore, becomes a marker of cultural conflict, of contested rules, as it was in the case I referred to in my introduction, of Shabina Begum, who challenged school uniform rules.

This story also invites comparison with Thucydides and the speech he constructs for Pericles, in advising the war widows. I have suggested that Thucydides, with this speech, declares his own historiographical practice in according *kleos* to all women by not talking about them.

[361] Hornblower 2013: 238 'women as objects (not only perpetrators) of reviling are an unusual feature'.
[362] Lee 2012: 180 on dress as embodied social practice, part of the construction of identity. Hall 1997: 40, citing 5.87 - 'cultural forms reinforce but do not define ethnic identity'. Antonaccio 2003: 63 on dress as index of Dorian/Ionian identity and ethnicity.
[363] Figuera 1985: 51.

Herodotus is different; the stories he tells of women present us with a wider perspective on war and incorporate contested versions of history, which he helps to preserve through his text, as cultural memory. The story indicates how Athenian women might be viewed by other city states, and by Herodotus. Their dress did not advertise their status but their *polis* origins. Indeed, far from cultural signifiers being unstable, as Haubold suggests, they become more so, in that Athenian women can now be distinguished from other women, through their dress. This change now signifies *polis* distinctiveness, not gender similarity. It is the Aeginetans, moreover, who use *nomos* not only to shape female behaviour and dress (like the Athenians) but also to incorporate that gender change more widely into ritual and cult, in religious practice which is the right place, in patriarchal terms, for female authority. Moreover, they can be trusted not to use their pins as weapons.

It is significant that Herodotus gives us the 'external' view on this story in which Athenian women are judged by men to have broken the rules of appropriate conduct, because it is possible that the story itself would be told by Athenians with a different emphasis. This is certainly the case with my next case study, when women join men in attacking Lycides and his family, and the story is used by Demosthenes as one of patriotism and defence of the *polis*.

3.2 The killing of Lycides and his family

Herodotus himself saw it as one of the advantages of equality of speech (ἡ ἰσηγορίη, 5.78) over tyranny, that a free man would be keen to fight for himself, whereas those who were repressed by a tyrant would fight badly on purpose.[364] (κατεχόμενοι μὲν ἐθελοκάκεον ὡς

[364] Powell 1938: 98 for translation of ἐθελοκακεέιν.

δεσπότῃ ἐργαζόμενοι, ἐλευθερωθέντων δὲ αὐτὸς ἕκαστος ἑωυτῷ προεθυμέετο κατεργάζεσθαι, 5.78).

> The advantages of everyone having a voice in the political procedure are not restricted to single instances but are plain to see wherever one looks ... when they were working for a master, they fought badly on purpose, but when they were freed, each one was eager to achieve for himself.
>
> δηλοῖ δὲ οὐ κατ᾽ ἓν μοῦνον ἀλλὰ πανταχῇ ἡ ἰσηγορίη ὡς ἔστι χρῆμα σπουδαῖον ... ὅτι κατεχόμενοι μὲν ἐθελοκάκεον ὡς δεσπότῃ ἐργαζόμενοι, ἐλευθερωθέντων δὲ αὐτὸς ἕκαστος ἑωυτῷ προεθυμέετο κατεργάζεσθαι. (5.78)

The extent of Herodotus' praise of *isēgoriē* is debated: Baragwanath argues that it is limited to military endeavour, by making the Athenians better fighters, and, in linking freedom to power, it foreshadows Athenian imperialism, whereas, for Hornblower, Herodotus emphasises equality *of speech* in the passage and suggests the words οὐ κατ᾽ ἓν μοῦνον ἀλλὰ πανταχῇ extend Herodotus' praise beyond the military.[365] Forsdyke reads the passage as a reflection on both *polis* traditions and Herodotus' own view of the link between political freedom and civic strength, and Rhodes argues that it shows Herodotus preferred freedom and constitutional government to subjection and tyranny making the passage less about Athens, than about the Greeks generally.[366]

My own view is that the passage is problematic because Herodotus provides evidence elsewhere in the *Histories* to contest his claim that Athens under tyranny was no better than

[365] Baragwanath 2008: 196-9; Hornblower 2013: 225-6.
[366] Forsdyke 2012: 537; Rhodes 2018: 277.

its neighbours (Peisistratus' military exploits, for example).[367] He also, as I will show in my analysis of the battle of Salamis, makes it clear that the Persians did not fight badly on purpose, the charge made against the Athenians, when they were ruled by a tyrant. Moreover, he problematises the Athenian *nomos* of *isēgoriē* with the following story, when the Athenians deny Lycides the right to refer the matter to the assembly, which would enable a full debate:

> One of the members of the Council, Lycides, argued that, in his opinion they ought to welcome Mardonius' proposals and refer the matter to the people. He did this either because he had been bribed by Mardonius, or because he actually approved of the proposals. The Athenians (not only the members of the Council, but also those outside) straightaway thought this was a terrible proposal. They surrounded Lycides and stoned him to death although they let the Hellespontine go unharmed. When the Athenian women found out about the uproar in Salamis over Lycides, every woman gave a signal to her neighbour and enlisted her help, and the women took the law into their own hands and made their way to Lycides' house, where they stoned his wife and his children to death.
>
> τῶν δὲ βουλευτέων Λυκίδης εἶπε γνώμην ὡς ἐδόκεε ἄμεινον εἶναι δεξαμένους τὸν λόγον, τόν σφι Μουρυχίδης προφέρει, ἐξενεῖκαι ἐς τὸν δῆμον. ὃ μὲν δὴ ταύτην τὴν γνώμην ἀπεφαίνετο, εἴτε δὴ δεδεγμένος χρήματα παρὰ Μαρδονίου, εἴτε καὶ ταῦτά οἱ ἐάνδανε: Ἀθηναῖοι δὲ αὐτίκα δεινὸν ποιησάμενοι οἵ τε ἐκ τῆς βουλῆς καὶ οἱ ἔξωθεν ὡς ἐπύθοντο, περιστάντες Λυκίδην κατέλευσαν βάλλοντες, τὸν δὲ Ἑλλησπόντιον Μουρυχίδην ἀπέπεμψαν ἀσινέα. γενομένου δὲ θορύβου ἐν τῇ Σαλαμῖνι περὶ τὸν Λυκίδην, πυνθάνονται τὸ γινόμενον αἱ γυναῖκες τῶν Ἀθηναίων, διακελευσαμένη δὲ

[367] Hormblower 2013: 225, citing 1.64.2 and 5.94.1.

> γυνὴ γυναικὶ καὶ παραλαβοῦσα ἐπὶ τὴν Λυκίδεω οἰκίην ἧισαν αὐτοκελέες, καὶ κατὰ μὲν ἔλευσαν αὐτοῦ τὴν γυναῖκα κατὰ δὲ τὰ τέκνα. (9.5.1-3)

This incident occurs towards the end of the *Histories*, when Xerxes has returned to Persia, after the defeat at Salamis, leaving his general Mardonius in command, with orders to continue the war against the Greeks. Mardonius has just seized Athens as an empty city (αἱρέει τε ἔρημον τὸ ἄστυ, 9.3.2). Women as well as men are living as exiles from Athens, on Salamis. Twice in a year they have had to leave their homes and farms, and evacuate their families, watching the Persians torch their city. This is the context for a story of the consequences of war for men and women when their community is dispersed, which engages with both political and social norms; to what extent do the actions of the Athenians violate the democratic *nomos* of *isēgoriē*, and break social norms of appropriate conduct? How does one 'live with the rules' when there is no longer a *polis*?[368] I think this story also asks to what extent Herodotus shapes this narrative; is he the passive recipient of an Athenian story, or does he distance himself from that account, giving us an 'external' view of Athenian rules?

This incident is used as an example of an extra-legal collective form of popular justice in Athens, a means of self-help in a society which lacked a police force or other forms of enforcement, and to argue that, though women were excluded from the formal deliberations of the assembly and the law courts, they had an important role to play in disseminating news and gossip, one of the ways, claims Lewis, that women policed the morality of others.[369] For Gottesman, this incident is the *locus classicus* for the role of word of mouth in carrying out public acts, a model for enforcement in normal circumstances, though he accepts that the

[368] Mossman 1995: 184 'When there is no longer any πόλις what rules apply?'.
[369] Forsdyke 2012: 156-7, 164; Hunter 1994: 139; Lewis 1996: 10-12; Gottesman 2014: 60.

circumstances in Herodotus' narrative are exceptional.[370] Allen interprets this story of stoning as 'expressing the community's desire to enforce its social norms' and 'a paradigmatic form of collective action', arguing that, by inverting peacetime norms of punishment (the foreigner goes free, the citizen is punished with death without trial, and the punishment is carried out by citizens, not the public executioner), this acts to confirm those norms: 'institutional rules were ignored, ideological norms were not'.[371] Schaps goes further, arguing that these women acted when the city was in danger and so subscribed to ideals of family and state.[372]

On this reading, the ideological argument is that the Athenians, male and female, are punishing a traitor, someone who was encouraging them to consider coming to terms with the Persians who had sacked their city and destroyed their temples; the Hellespontine, as emissary, is not expected to show loyalty to Athens, so can go free. This is certainly the story which attracts Demosthenes, in *On the Crown*, when he uses it to support his argument for fighting Philip in Chaeronea, by drawing a parallel with the Athenians who fought the Persians at Marathon, Plataea, Salamis and Artemisium.[373] In his speech, though, the stoning takes place before, not after, the battle of Salamis, when the Athenians can be shown to show courage in choosing to retreat to Salamis, to avoid coming to terms with the Persians, rather than being forced to, as in Herodotus' narrative.[374]

In gender terms, moreover, Demosthenes makes a direct appeal to an imagined audience beyond the assembly, by saying 'your wives did the same [stoning to death] to his wife' (αἱ γυναῖκες αἱ ὑμέτεραι τὴν γυναῖκ᾽ αὐτοῦ, Dem. 18.204). The story therefore, has a function in

[370] Gottesman 2014: 64-5; Hunter 1994.
[371] Allen 2000: 142-145.
[372] Schaps 1982: 212-3.
[373] Dem.18.208. Yunis 2005: 82n163.
[374] Yunis, H. 2001: 221-223; 2005: 80-1.

an Athenian context, showing the Athenians, male and female, stand up for freedom against enslavement to the Persians and to that extent it makes sense to link this passage to the speech made by the Athenians to the Spartans (8.144) when they reject any alliance with Xerxes; Baragwanath also points out that this is an isolated occasion when the Athenians reject debate.[375]

Herodotus' presentation of the story however does not support this reading, in my view. I think he highlights the extraordinary nature of the Athenians' behaviour, part of his characterisation of the Athenians as becoming barbarians, foreshadowing the end of the *Histories* (9.120) when they crucify Artayctes and stone his son to death in equally brutal fashion.[376] Dewald also makes this parallel, commenting on the 'lynch-mob mentality' of the Athenians, noting that female violence is the complement and mirror of male violence, not its antithesis.[377] I will analyse this passage by considering, firstly, the actions of both men and women and I will argue that, far from being paradigmatic of actions which might be taken in normal circumstances, Herodotus intends us to read this in the context of the abnormal circumstances of war. Secondly, I will argue that Herodotus emphasises those abnormal circumstances through his portrayal of the women in the story, whose behaviour breaches family norms. As well as deconstructing the Greek-barbarian polarity, he also shows that gender rules, based in Athens in particular on the separation of the genders, are vulnerable in the circumstances of war.

[375] Baragwanath 2008: 231; 312n.51. Harrison 2002: 566.
[376] Flower and Marincola 2002: 107-8, 309; Pelling 1997: 60-66.
[377] Dewald, 1998: 723; 2013: 158.

The Athenians deny Lycides the right to put a resolution made in the *boulē* to a vote in the assembly. Baragwanath argues that this accords with the Athenian legal charge of *graphē paranomōn*,[378] a prosecution of someone who proposes a *nomos* or *psephisma* (before 403BCE), charging that the proposal is unlawful (*paranomōn*).[379] The procedure, whereby a proposer of an illegal decree could be indicted on the grounds that it conflicted with existing law, was common by 4th century BCE and, argues Gagarin, the merit of both the proposer and the decree were relevant.[380] However, this presupposes a legal process of indictment, whereas in this story, the men commit an extra-judicial killing, motivated by outrage at Lycides' proposal (δεινὸν ποιησάμενοι). There is a parallel here with the motivation of the Athenian women who kill the survivor of the Aeginetan campaign; as in that story, outrage motivates a breach of *nomos*, and leads to a transgressive act. I read this, therefore, as an indication that Herodotus recognises that the exercise of freedom of speech is vulnerable at times of crisis, and liable to be suspended in times of war.[381]

I argue that Herodotus emphasises the breach of a political *nomos* by showing women breaching a social *nomos*. In their actions, the women are not acting as guardians of *nomos* by enforcing communal norms, nor are they delivering a form of 'rough justice'. They kill another woman and her children, who are part of the Athenian community, not enemies. An audience might hear echoes of Andromache's words in Euripides' *Trojan Women*: 'O you Hellenes, inventors of barbaric cruelties, why kill this child who has done no wrong? (ὦ βάρβαρ᾽ ἐξευρόντες Ἕλληνες κακά, τί τόνδε παῖδα κτείνετ᾽ οὐδὲν αἴτιον, E. *Tr.*764-5).[382] It is

[378] Baragwanath, 2008: 312n.51.
[379] Todd 1990: 233.
[380] Gagarin 2018: 2
[381] Dewald 1998: 723.
[382] Flower and Marincola 2002: 309.

significant, I think, that Demosthenes does not mention the killing of children or the destruction of the *oikos* in his speech; perhaps he could not rely on that aspect of Herodotus' story finding favour with his audience.

Georgoudi argues that female activity in civic as well as private space is sometimes marked by collaboration, participation and complementarity rather than exclusion and separation, and here men and women certainly collaborate, but in a transgressive activity.[383] Herodotus presents these women as if they were communicating across battle lines. They give one another a signal (διακελευσαμένη δὲ γυνὴ γυναικὶ, 9.5.3) suggesting a military chain of command rather than a type of social control or enforcement of popular morality.[384] Herodotus creates warrior women of these female Athenians, who also act of their own accord (αὐτοκελέες, 9.5.3), suggesting that the norms of Athens which deny women legal autonomy are fractured in times of war. They become a law unto themselves. This story, therefore, illustrates clearly a disjuncture between ideology and practice, and is one example where the involvement of women in war does signal disruption and the transgression of norms as it does in Thucydides.[385] Indeed, I argue that the women's actions in Herodotus' story are more extreme; in Thucydides' narrative, women's actions, building defensive walls (*Th.*1.90.3; 5.82.6) and throwing roof tiles from housetops at Plataea (*Th.* 2.4.2) and Corcyra (*Th.* 3.74.1), are at least in protection and defence of the Athenian *polis.*[386]

To summarise, I argue that it is the women's actions in this story, and the way they are presented by Herodotus, as if they were in battle, but directing themselves rather than under a

[383] Georgoudi 2015: 209-10.
[384] διακελευσάμενοι: a call to action, for example, by the Phoenicians to capture the women at Argos (1.1.4) and by the Persians to launch a cavalry charge to rescue the body of Masistius (9.22.3).
[385] Flower and Marincola 2002: 108.
[386] Shannon-Henderson 2019: 97-98.

commander, which refutes the argument that this story functions as part of an Athenian patriotic tradition, which Herodotus records in his narrative. The women's transgressive actions, rather, complement a male breach of *nomos*, both in denying Lycides the right to put a motion to the assembly and in killing a citizen without due process. That aspect of the institutional exclusion of women, namely *isēgoriē*, the right to speak in the assembly, is shown to be unstable in war, when it is denied to Lycides, and when women as well as men are involved in a violent act which destroys a whole family. The immediate context, the destruction of Athens and the forced migration to Salamis, help to explain their actions. However, this story also tells us something significant about gender relations and *nomos* in circumstances where war has come to Athens, has disrupted households and forced the whole community to become refugees, in other words, where war is not just men's concern; the fragility of the Athenian *nomos* of *isēgoriē* is also exposed by the actions of both women and men.

I return to a question I posed in my introduction: how do we recognise the absence of the rule of law? This story for me illustrates a situation where Athenian women are shown to break the rules of their own *polis.* The women's actions coincide with male collective mob violence, and they are certainly not inferior in aggression, intent or capacity to act. This story challenges the ideological construct of Athenian women as secluded in the *oikos* and silent in public affairs. They identify with their men, they show a capacity for violence, they join with men in denying an opportunity for equality of speech (*isēgoriē)* which was a keystone of Athenian democracy, and they do not defend communal norms which protect the *oikos*. Demosthenes presents these Athenian women and men as defenders of their *polis* but Herodotus' account, in my view, distances him from this patriotic account. Athenian women,

both in the Aeginetan episode and the killing of Lycides' wife and children, are involved in actions which may be construed as policing male conduct (the 'internal' view) but I interpret as transgressive, reflecting Herodotus' 'external' view. He uses another group of women, the mythical Amazons, to challenge another Athenian story in which these women are aggressors and invaders who must be defeated.

4. Rejecting the rules

4.1 The Amazons: a thought experiment in difference

In this section I will argue that the story of the Amazons is constructed by Herodotus to offer his audience a thought experiment in which women play a role in making, changing and enforcing *nomos*, rejecting the gender norms not only of the Greeks but also of their own society. Such thought experiments are a way to ask a counter-factual question which prompts enquiry. For example, *Feminist Judgments: from Theory to Practice* is a modern example of a theoretical engagement with law, in which the authors collaborate to rewrite existing judgments in significant legal cases from a feminist perspective, asking 'What if a group of feminist scholars were to write the 'missing' feminist judgments in key cases?'[387] These authors aim to disrupt legal constructions of masculinity and femininity which devalue the latter, by 'intervening in law from a feminist perspective ... to introduce different accounts of gender that might be less limiting for women'.[388] The question which Herodotus poses is: What if men and women performed the same roles? Herodotus also asks a question which is still pertinent today, even though women have achieved legal equality; if *nomos* prescribes that women do the same work as men, who does 'women's work'?

[387] Hunter, McGlynn and Rackley 2010: 3.
[388] Hunter, McGlynn and Rackley 2010: 7.

I will argue that Herodotus uses this story to reflect on the 'complicated process of negotiation, conflict and collaboration'[389] which occurs when two cultures (here, the Amazon and the Scythian) encounter each other, by staging a debate on marriage norms and social practices, and that he reveals diversity rather than opposition. Moreover, I aim to show that he deliberately deconstructs the Athenian myth of the Amazon as invader, and aggressor, who has to be defeated, by narrating a story in which the relationship between the two groups is characterised by reciprocity, rather than hostility. I will also challenge Penrose's claim that Herodotus is 'engaging in orientalism' in constructing a story which an audience of Greek men could understand. I assert that Herodotus in fact destabilises his audience's expectations by using the Amazons to 'think about' gender and law, and his approach is more nuanced than Penrose acknowledges.[390]

Herodotus highlights by opposition how certain cultural constructs are embedded in both Greek and non-Greek concepts of community, in particular, the centrality of the *oikos*, and the male authority figure, both of which are absent from the Amazons' world. To that extent I adopt a structuralist approach to this story, based on binary oppositions, following Hartog, for example, who argues that the Scythians turn into quasi-Greeks, during the course of the story, creating a 'dual relationship: Amazons on the one hand and Scythians/Greeks on the other'.[391] Du Bois presents the Amazon state as the inversion of the Greek *polis*,[392] and Hardwick reads a schematic polarity between the social organisations of Greeks and Amazons.[393] Rosellini and Saïd remark on the 'otherness' of a society which makes no distinction between gender roles in either war or marriage.[394]

[389] Dougherty and Kurke 2003: 2.
[390] Penrose 2016: 116.
[391] Hartog 1988: 216-224.
[392] du Bois 1982: 32-37.
[393] Hardwick 1996: 17-33.
[394] Rosellini and Saïd 2013: 239-242.

However, I argue that Herodotus, through speech, presents us with Amazons who become articulate and persuasive once they can communicate with the Scythian young men and have acquired rhetorical skills, thereby showing through speech their engagement with *nomos* and making them more 'Greek' than the Scythian young men. Their oratorical skill makes them similar to the normative Athenian male, an unsettling prospect for some of Herodotus' audience, perhaps, and destabilising the Amazon as 'other'.

The myth of the Amazon has a particular significance in Athenian ideology, enforcing and perpetuating Athenian gender roles; 'being an Amazon' is only an interim status, which requires the Amazon to die so that men and men alone can occupy the role of warrior and master over women.[395] Aeschylus has Athena attribute the name of the Areopagus to the fortification made by the Amazons when they came to Athens to take revenge on Theseus (A. *Eum*. 685-90).[396] They also feature in artistic form on black-figure vases from the late 6th century BCE. One, c. 520-500 BCE, shows them fighting Heracles and Telamon, another, c. 510 BCE shows Theseus abducting the Amazon Antiope. A mural at the Theseum in Athens shows their battle with Theseus for the Acropolis, whilst the Stoe Poikile included paintings of Amazons on horseback and with wicker shields.[397] By the time of the *Histories*, moreover, they are shown in Attic vase paintings in Persian clothing, and on the Parthenon frieze, fighting the Greeks, which suggests that they were, after 480 BCE, used by the Athenians as a

[395] Dowden 1997: 117-124 'the mythic construct of Amazons engages in a dialogue with the gender roles of the society in which it is viewed'; Blundell 1999: 61-2 'to justify and reinforce the personal and political dominance of men'; Fantham, Foley, Kampen, Pomeroy, and Shapiro 1994: 128-134 on the inversion which makes the Amazons the dominant partners in marriage; Tyrrell 1984: 41 - 'a reversal of patriarchal customs'; 120 - Defeat of Amazons 'supported the sexual dichotomy institutionalised in Athenian marriage'; Bresson 2016: 43-44 on Athenian use of Amazon myth to justify male superiority. Hall 1989: 202.
[396] Tyrrell 1984: 14.
[397] Tyrrell 1984: 10-14 on artistic depictions of Amazons.

artistic trope to identify the 'effeminate' Persian with the female Amazon, both of whom had to be defeated.[398]

This reading of myth places 'the Amazon' within the Athenian imaginary, as a scary embodiment of disorder, a dystopian world turned upside down. Herodotus recognises the place of the Amazon in Athenian gender ideology, in the speech he constructs for the Athenians before the battle of Plataea (9.27), when they claim a place of honour in the battle lines and seek a rhetorical advantage over the Tegeans, by reminding the Spartans of their victory over the Amazons, and anticipating later Athenian funeral orations in which these women symbolise the postulated political disorder caused by women acting like men.[399]

However, Hardwick notes that it was specifically the Athenians who portrayed the Amazons as invaders, who posed a challenge to Greece, and who used their abduction and defeat to assert historical supremacy. She points to the Amazons of epic who appear in the *Iliad* as warriors, earning the epithet of 'a match for men' (ἀντιανείραι, Hom. *Il*. 3.189; 6.186), arguing that they are portrayed as worthy opponents of Homeric heroes, to signal the achievements of those heroes in defeating them. For Greeks rather than Athenians, she argues, it was the self-sufficient lifestyle of Herodotus' Amazons, and a psychology which was neither submissive nor aggressive without provocation, which was the real challenge to Greek social and political assumptions.[400]

[398] Lefkowitz 1996: 6; Fantham, Foley, Kampen, Pomeroy, and Shapiro 1994: 134n.1.
[399] Loraux 1986: 74-5, 146. McInerney 2003: 324. Demand 1994: 129n.44.
[400] Hardwick 1996: 19-34.

Penrose adopts a post-structuralist, postmodernist, postcolonialist approach to rethink the 'theory of the other', and seeks to provincialise Athens and reclaim non-Athenian attitudes to gender.[401] Since a Greek audience 'could not conceive of equality between the sexes' Herodotus, according to Penrose, creates a story in which Scythian women do women's work, in order to make it intelligible to an audience of Greek men.[402] However, Penrose is looking for real Amazons.[403] He relies on archaeological evidence of historical peoples where women fought, but this does not tell us anything about gender hierarchies or power structures within these communities, or indeed how these historical groups constructed ideologies of masculinity or femininity.[404] As a result, Penrose, in my view, underestimates the nuance and challenge in Herodotus' account. I aim to show that Herodotus destabilises fixed concepts of masculinity (*andreia*) by showing that Scythians have a different concept of war from Greeks, in which strategic retreat has a role to play. Moreover, in giving the Amazons an ability to manipulate and persuade the Scythian young men through speech, he marks his narrative out as different from other literary and artistic portrayals, in which the Amazons have no voice.

When Herodotus starts his story with a linguistic note that the word 'Amazon' means 'killer of men' (Οἰόρπατα; ἀνδροκτόνοι, 4.110.1) in both Scythian and Greek, confirms that the Greeks were victorious in battle (νικήσαντας τῇ ἐπὶ Θερμώδοντι μάχῃ, 4.110.1) but that the crew of the ships taking the Amazons away were slaughtered by them (ἐπιθεμένας ἐκκόψαι τοὺς ἄνδρας, 4.110.1), he presents his audience with a familiar picture. They are fully 'other' in being women who fight, are defeated by Greek warriors but capable of violence against

[401] Penrose 2016: 2-17. See also Skinner 2012: 28 on postcolonial project to emphasise diversity in ethnographical practice.
[402] Penrose 2016: 115-116.
[403] Penrose 2016: 2 'I am looking for historical women who went to war and were strong and powerful'.
[404] Penrose 2016: 101-102.

men who are sailors, not warriors, that is, not worthy opponents. Once they land, however, they start plundering the Scythians' land on horseback (ἱππαζόμεναι ἐληίζοντο τὰ τῶν Σκυθέων, 4.110.2), suggesting a way of life as nomadic hunters, an aspect of the Amazon that differs from either the epic warrior or the vengeful invader. Herodotus' theme is the meeting of two cultures, the Scythian and the Amazon, which produces the Sauromatae, not the conflict between two nomadic groups.

The story starts by focalising the Scythians' incomprehension (οὐκ εἶχον συμβαλέσθαι τὸ πρῆγμα, 4.111.1) when they first encounter the Amazons.[405] They wonder where the people plundering their land have come from (ἐν θώματι ἦσαν ὁκόθεν ἔλθοιεν, 4.111.1), since they cannot identify their nationality, language or dress (οὔτε γὰρ φωνὴν οὔτε ἐσθῆτα οὔτε τὸ ἔθνος ἐγίνωσκον, 4.111.1). They have no means of comparison; they are 'confronted by the unknown'.[406] Herodotus signals that an interpretive exercise is underway: the Scythians' wonder is a prompt to inquiry and investigation into the *nomoi* of the people they encounter. Herodotus employs narrative delay to good effect because the Scythians are ignorant of the most remarkable fact, namely that they are women. Their reaction to that fact and their subsequent negotiations with the Amazons illustrate a degree of ambiguity in both the Scythian young men and the Amazons, I suggest, rather than a polarity in which the Scythians become Greeks. When confronted with a 'logical monster that is both man and woman at the same time', the Scythians do not retreat but engage in negotiations.[407] The rapprochement

[405] The only other use of this verb in Herodotus with this meaning is to express Xerxes' state of mind before the battle of Thermopylae. The king cannot grasp the Spartan custom to prepare for almost certain death by combing their hair (νόμος γάρ σφι ἔχων οὕτω ἐστί: ἐπεὰν μέλλωσι κινδυνεύειν τῇ ψυχῇ, τότε τὰς κεφαλὰς κοσμέονται 7.209.1) and *nomos* needs to be interpreted by Demaratus.
[406] Hartog 1988: 219n18.
[407] Hartog 1988: 221.

between their young men and the Amazons shows the two groups as remarkably alike.[408] The narrative emphasises, too, that both groups live a nomadic existence, hunting and raiding (ζόην ἔζωον τὴν αὐτὴν ἐκείνῃσι, θηρεύοντές τε καὶ ληιζόμενοι, 4.112), that is the opposite of the settled life of the *polis*. On the one hand, the men are the instigators of their plan, to father children with the Amazons (ἐξ' αὐτέων παῖδας ἐκγενήσεσθαι, 4.111.2), which accords with the Athenian view that the purpose of marriage is to produce an heir. It also shows that the young men are not interested in the Amazons as potential *hetairai*. On the other hand, the Athenian marriage custom whereby the woman goes to her husband's house with a dowry is reversed, but through a negotiated change of *nomos*.

The two groups begin to communicate by sign language (τῇ δὲ χειρὶ ἔφραζε, 4.113.2) and pair off. There is no suggestion of any coercion. This points to another departure from the Athenian myth, in which Heracles abducts and overpowers the Amazons and 'metaphorically rapes' their culture.[409] Baragwanath points to the contrast between Herodotus' depiction of Theseus as a hubristic abductor of women, and Athenian iconography and political discourse which construes Theseus' victory over the Amazons as analogous to Greek victory over the Persians.[410] The next step they take confirms this reciprocity and again illustrates the similarity of the Scythian men and the Amazons and their difference from the Greeks and the Greek *oikos* for the two join camp and make it home (συμμείξαντες τὰ στρατόπεδα οἴκεον ὁμοῦ, 4.114.1).

[408] Munson 2005: 72 - the narrative is 'designed to undermine conventional notions of alterity'.
[409] du Bois 1982: 40.
[410] Baragwanath 2012: 290-1.

The nomadic lifestyle of the Scythians, with their lack of a fixed *oikos* and *polis*, and a culture based on hunting rather than agriculture, set them apart from Greek norms of settlement and cultural practice. However, in one respect, they were similar in assigning different roles to men and women. This is the reason given by the Amazons for not returning with the Scythian young men to their homeland: they know enough about 'women's work' and women's place (inside the wagon) to reject it. This emerges from the first speech which Herodotus gives to the Amazons, when the Scythian young men propose a joint move to their land, and a monogamous relationship with the Amazons.

> 'We could not live with your women; for we and they do not have the same rules. We shoot the bow and throw the javelin and ride, but have never learned women's work; and your women do none of the things of which we speak, but stay in their wagons and do women's work, and do not go out hunting or anywhere else. So we could never agree with them.
>
> If you want us to be your wives, and to seem the most just of men, go to your parents and let them give your share of property, and after that let us go and live together.' The young men were persuaded and did this.
>
> 'ἡμεῖς οὐκ ἂν δυναίμεθα οἰκέειν μετὰ τῶν ὑμετερέων γυναικῶν: οὐ γὰρ τὰ αὐτὰ νόμαια ἡμῖν τε κἀκείνῃσι ἐστί. ἡμεῖς μὲν τοξεύομέν τε καὶ ἀκοντίζομεν καὶ ἱππαζόμεθα, ἔργα δὲ γυναικήια οὐκ ἐμάθομεν: αἱ δὲ ὑμέτεραι γυναῖκες τούτων μὲν οὐδὲν τῶν ἡμεῖς κατελέξαμεν ποιεῦσι, ἔργα δὲ γυναικήια ἐργάζονται μένουσαι ἐν τῇσι ἁμάξῃσι, οὔτ᾽ ἐπὶ θήρην ἰοῦσαι οὔτε ἄλλῃ οὐδαμῇ. οὐκ ἂν ὦν δυναίμεθα ἐκείνῃσι συμφέρεσθαι.

ἀλλ᾽ εἰ βούλεσθε γυναῖκας ἔχειν ἡμέας καὶ δοκέειν εἶναι δίκαιότατοι, ἐλθόντες παρὰ τοὺς τοκέας ἀπολάχετε τῶν κτημάτων τὸ μέρος, καὶ ἔπειτα ἐλθόντες οἰκέωμεν ἐπὶ ἡμέων αὐτῶν.᾽ ἐπείθοντο καὶ ἐποίησαν ταῦτα οἱ νεηνίσκοι, 4.114.4. [411]

The Amazons have already proved themselves better linguists than the Scythians (τὴν δὲ φωνὴν τὴν μὲν τῶν γυναικῶν οἱ ἄνδρες οὐκ ἐδυνέατο μαθεῖν, τὴν δὲ τῶν ἀνδρῶν αἱ γυναῖκες συνέλαβον, 4.114.1) and the men are persuaded to adopt their proposals. The Amazons respond effectively to the men with a wide variety of rhetorical techniques. In their first speech (4.114.3-4) they employ ring composition to emphasise their first main point which is the contrast between them and Scythian women; they would not be able (οὐκ ἂν δυναίμεθα, 4.114.3; 4.114.4) to live with (οἰκέειν, 4.114.3) Scythian women or get along with (συμφέρεσθαι, 4.114.4) them. They show a familiarity with anaphora (ἡμεῖς is repeated three times in this first speech) and the use of μὲν and δὲ to mark the antithesis between them and the Scythian women. They also know the persuasive power of the superlative (δικαιότατοι, 4.114.4) and that a tricola of verbs gives a sense of rhythm (τοξεύομέν τε καὶ ἀκοντίζομεν καὶ ἱππαζόμεθα, 4.114.3). They conclude with an order and a request (ἀπολάχετε τῶν κτημάτων τὸ μέρος, καὶ οἰκέωμεν ἐπ᾽ ἡμέων αὐτῶν, 4.114.4), they speak with authority and are clear about what they want, all marks of a good advocate.

So when they had been given the allotted share of possessions that fell to them, and returned to the Amazons, the women said to them: ‘We are worried and frightened how we are to live in this country after depriving you of your fathers and doing a lot of harm to your land. Since you propose to have us for

[411] ἐπείθοντο could also be translated as ‘the men obeyed’

wives, do this with us: come, let us leave this country and live across the Tanaïs river.'

ἐπείτε δὲ ἀπολαχόντες τῶν κτημάτων τὸ ἐπιβάλλον ἦλθον ὀπίσω παρὰ τὰς Ἀμαζόνας, ἔλεξαν αἱ γυναῖκες πρὸς αὐτοὺς τάδε. 'ἡμέας ἔχει φόβος τε καὶ δέος ὅκως χρὴ οἰκέειν ἐν τῷδε τῷ χώρῳ, τοῦτο μὲν ὑμέας ἀποστερησάσας πατέρων, τοῦτο δὲ γῆν τὴν ὑμετέρην δηλησαμένας πολλά. ἀλλ' ἐπείτε ἀξιοῦτε ἡμέας γυναῖκας ἔχειν, τάδε ποιέετε ἅμα ἡμῖν: φέρετε ἐξαναστέωμεν ἐκ τῆς γῆς τῆσδε καὶ περήσαντες Τάναιν ποταμὸν οἰκέωμεν.' (4.114.2-4.115.1-2)

In this second speech (4.115.1-3) they start with a synonym (φόβος τε καὶ δέος, 4.115.1) and answer the men who had given family and property as reasons for the Amazons to go to live with them and the other Scythians (εἰσὶ μὲν τοκέες, εἰσὶ δὲ καὶ κτήσιες, 4.114.2). The women use μὲν and δὲ in the same connective sense to explain why this would not be possible; they have taken the men from their parents (τοῦτο μὲν ὑμέας ἀποστερησάσας πατέρων, 4.115.2) and caused great damage to their land (τοῦτο δὲ ... δηλησαμένας πολλά, 4.115.2). Once again, they use the imperative to give orders (τάδε ποιέετε ἅμα ἡμῖν, 4.115.3) and as a rallying cry, Come! (Φέρετε, 4.115.3) and combine it with a proposal for their own marriage arrangements:

If you want us to be your wives and to appear really fair, you should go to your parents and get your share of your property, and then when you come back we can form our own community. The men were persuaded and acted accordingly.

εἰ βούλεσθε γυναῖκας ἔχειν ἡμέας καὶ δοκέειν εἶναι δικαιότατοι, ἐλθόντες παρὰ τοὺς τοκέας ἀπολάχετε τῶν κτημάτων τὸ μέρος, καὶ ἔπειτα ἐλθόντες οἰκέωμεν ἐπὶ ἡμέων αὐτῶν.' ἐπείθοντο καὶ ἐποίησαν ταῦτα οἱ νεηνίσκοι. (4.114-115)

Hartog sees this as an example of role reversal in that men are persuaded by women but it could equally illustrate that the Amazons are more 'Greek' than the Scythians in that they have mastered the rules of oratory, which Herodotus emphasises by displaying their rhetorical competence.[412]

The issue for the Amazons is a clash of rules (τὰ νόμαια, 4.114.3). Herodotus uses this word in relation to the Scythians to show their conservatism (4.80.5) but, as we see in the story of the Amazons, this is not reflected by the behaviour of the young men they encounter. The Amazons say their way of life is different from that of Scythian women, who live indoors in the wagons. We cannot conclude from this that the Scythian women share gender rules with Greek women but have to consider this passage in the context of the other information Herodotus has given us about the Scythians, which shows the performance of female roles as either transgressive, according to Greek custom, or strange. He starts Book 4 with a story of a generation of children born to slaves and Scythian wives who had sex with them (ἐφοίτων παρὰ τοὺς δούλους, 4.1.3) in their husbands' long absence fighting the Medes, and he describes their funerary practice whereby a corpse was placed on a wagon, taken round to friends and entertained for 40 days before burial (4.73), which contrasts with the role of Athenian women in lamenting the dead and visiting family tombs.[413] We also learn that Scythian women cleansed themselves (γίνονται καθαραὶ καὶ λαμπραί, 4.75.3) with a paste of

[412] Hartog 1988: 130
[413] Fantham Foley, Kampen, Pomeroy, and Shapiro 1994: 76, 96-7. Pomeroy 1975: 80.

cypress, cedar, and frankincense wood as an alternative to taking a bath (ἀντὶ λουτροῦ, 4.75.2).

Pelling suggests that the Scythians, including their women, seemed normal compared with the Amazons who personified otherness.[414] However, I argue that the cultural differences between Scythian and Greek women, between the nomadic existence and the life of the *polis*, outweigh a similarity which is based solely on division of labour. Herodotus introduces his audience to the strangeness of Scythian and Amazon culture, not so much as an exercise in self-definition, but rather to highlight those aspects of the Amazon and Scythian which are not so alien, and which are revealed through speech.[415]

Herodotus' Amazons are more 'Greek' than the Scythians in that they have mastered the art of oratory; in fact, in constructing his Amazons, Herodotus makes them better at Greek than Scythian, which they struggled to learn (οὐ χρηστῶς ἐξέμαθον, 4.117). This aspect of Herodotus' Amazons is their most remarkable, I suggest, which can only be explored as a thought experiment, where the audience's preconceptions are challenged, presenting us with Amazons who argue, negotiate and persuade. Herodotus chooses to dramatise a debate on *nomos* in a dialogue which gives a speaking role to Amazons. In Athenian culture at least, Amazons are personified as voiceless fighters and aggressors, whereas in Herodotus they use their powers of speech to persuade the Scythian young men to adopt rules which persisted.

[414] Pelling 1997: 52.
[415] West 2002: 439; Sebillote-Cuchet 2013: 417-421 on Amazons as part of heroic world and epic tradition, which had become strange to 5th BCE Greeks. Pelling 2013: 362-3 analyses this passage in terms of degrees of strangeness rather than binary polarities, critiquing Hartog.

He concludes his story of the Amazons with an account of their female descendents who hunt, ride horses, wear the same clothes as men and go to war (ἐς πόλεμον φοιτῶσαι, 4.116.2). The Sauromatae have a *nomos* which requires a woman to kill a man in war before she can marry (οὐ γαμέεται παρθένος οὐδεμία πρὶν [ἂν] τῶν πολεμίων ἄνδρα ἀποκτείνῃ, 4.117). This makes them heirs to the Amazons of myth. However, Herodotus introduces a degree of diversity into this female group. In his final ethnographical observation, he notes that some women die unmarried because they cannot satisfy this *nomos* (οὐ δυνάμεναι τὸν νόμον ἐκπλῆσαι, 4.117). This fits in with Herodotus' observation later in Book 4 that the Scythians had a different ideological concept of war from the Greeks or indeed from other non-Greek peoples. They avoided war as a general rule. Because they led a nomadic lifestyle, they proved formidable opponents to the Persians, as illustrated by the following speech by their king Idanthyrsus, when Darius asks him why the Scythians keep running away:

> I have never fled from any man in fear – I never have in the past and that is not what is happening now. What I am doing now is not far removed from my usual way of life during peacetime. I'm not going to fight you, and I'll tell you why. If we had towns we might worry about the possibility of them being captured, and if we had farmland we might worry about it being laid to waste, and then we might engage you in battle quite quickly: but we don't have either.
>
> ἐγὼ οὐδένα κω ἀνθρώπων δείσας ἔφυγον οὔτε πρότερον οὔτε νῦν σὲ φεύγω, οὐδέ τι νεώτερον εἰμὶ ποιήσας νῦν ἢ καὶ ἐν εἰρήνη ἐώθεα ποιέειν. ὅ τι δὲ οὐκ αὐτίκα μάχομαι τοι, ἐγὼ καὶ τοῦτο σημανέω. ἡμῖν οὔτε ἄστεα οὔτε γῆ πεφυτευμένη ἐστί, τῶν πέρι δείσαντες μὴ ἁλῷ, ἢ καρῇ ταχύτερον ἂν ὑμῖν συμμίσγοιμεν ἐς μάχην. (4.127.1-2)

They rejected the type of *andreia* which amounted to 'win or die', the Spartans' all-powerful *nomos* (7.104) and which required a man to perform his masculinity in battle; running away for the Scythians was a tactical move, not a sign of cowardice. However, Idanthyrsus warns Darius that if he destroys the Scythian ancestral burial grounds, then the Scythians will engage the Persians in battle (4.127.3). The female Sauromatae who fight, therefore, are not a mirror image of their Greek or Persian counterparts, but share with men a different motivation for going to war.

Herodotus' picture of the Amazons, therefore, is an ambiguous one. The marriage rule whereby the Scythian men moved to live with the Amazons and brought a dowry is an inversion of the patrilinear Greek custom but also challenges the myth of the Amazon invader, and the relationship between the two groups is characterised by reciprocity rather than hostility. In the story of the Amazons, Herodotus imagines women both making and speaking rules. I have shown that he effectively undermines Athenian ideology through destabilising its gender polarities on the Amazon, and placing her within a world where rules are negotiated, rather than in the disruptive space she occupies within the Athenian imaginary.

Gould cites the Amazon story as evidence that the role of women was 'culturally determined not naturally given'.[416] This story, therefore supports Thomas' general claim that Herodotus makes a stand for *nomos* as against *phusis,* in an argument that was well rehearsed by contemporary sophists.[417] However, I argue that Herodotus is suggesting that *nomos* itself is to be debated; it is not set in stone, but potentially a subject for negotiation. By putting the debate in the mouths of Amazons he confronts those members of his audience for whom they

[416] Gould 1989: 132.
[417] Thomas 2000. 123-127.

were merely the embodiment of defeat, as warriors, as women, as quasi-Persians, or the focus of fear or anxiety regarding masculine identity.

Conclusion

Women are shown to engage with *nomos* through speech, yet it is also in their interaction with men that we see the power of the rule of law. In this chapter, I have considered various models of female practice and speech and shown a range of responses to the rule of law, women both protesting against violations of *nomos*, and passing on gender norms and expectations. These stories illustrate, through gender themes which are declared in speech, the normative ideal of the rule of law, which sets boundaries on human behaviour.

It is also clear that these women all rely on unwritten rules which are conveyed through speech. Moreover, none speak in a judicial setting; rather, these forms of speech take place in the *oikos*. We can, therefore, identify *nomoi* through female speech and also see women showing interpretive skills and making judgments. My examples show that negotiation and persuasion are as important to the concept of *nomos* as the creation of 'the other' which is a significant technique in adversarial litigation. In gender terms, the exclusion of women from formal adjudication and deliberation may be less significant than the extent to which they have influence and a voice in more informal settings.

As for the Athenian women, their actions are interpreted as transgressive by the Athenian men, yet Herodotus problematises any easy conceptualisation of them as Bacchic maenads by making each individual woman speak her sense of loss, asking 'Where is my husband?' The killing of Lycides and his family by both Athenian men and women, in my interpretation,

shows that both political and gender norms are at risk in times of war. In my next chapter, I focus on relationships within the royal *oikos* and the threat to the rule of law posed by tyranny.

Finally, I argue that the story of the Amazons can be read as a thought experiment. Herodotus is asking us to consider what a society where women perform the same roles as men would look like and the mythical nature of the Amazons makes this an ideal vehicle for such an experiment. The case study does not emphasise the strangeness of women warriors but of women who reject women's work, in a world where the *oikos* is literally empty: the women have left the wagons and women's work, and participate with men in the hunt, the battle, the raiding party. This emphasises by opposition the central role of the *oikos* in both Greek and non-Greek societies, as I will consider in the next chapter.

CHAPTER 4: HOW DOES *NOMOS* REGULATE DOMESTIC RELATIONSHIPS?

Introduction

In this chapter, I consider the role of *nomos* in constructing social and political expectations within the *oikos* in the *Histories*, and how this intersects with the ideology and practice of tyranny. My focus is on royal households, because this is where Herodotus sets most of his stories which concern family relationships, showing the impact of those relationships on events in his wider narrative. I develop a model of *nomos* which reflects both its coercive, duty-imposing aspect (orders backed up by threats) and its power-conferring, facilitative aspect, creating rights and duties within a coercive framework, which acknowledges the force of societal as well as legal control. I also develop the sociological model I outlined in my introduction, to analyse how people are shown to 'live with the rules' in the *Histories*, under the political *nomos* of tyranny. This model identifies three types of response to the rule of law: 'before the law', meaning conformity or supplication in the face of judicial power, which in the *Histories* often means obedience or passivity in response to tyranny; 'with the law', in which law is a game requiring strategy and skilful manoeuvring; and finally, 'up against the law', whereby law is understood to be a 'terrain of power, where might makes right'.[418] In this third account, people sometimes find ways of violating formal hierarchy, refusing to offer the deference produced by status differentials. In resisting, people seek diverse goals. For some it is to retain a sense of dignity and honour, for others revenge.[419] I will use this tripartite model to analyse how relationships within the *oikos* are regulated by *nomoi*.

[418] Sibley and Ewick 2000: 54-55.
[419] Sibley and Ewick 2000: 52-53; Harding 2011:20-21.

1. Rule of law and the *oikos*

My argument, applying the principles of legal pluralism, is that the *oikos* is a significant space where gender norms and expectations are regulated, and coexist with political *nomoi*, whatever their type, so those who ignore the regulation of gender norms in the *oikos* violate the rule of law. Moreover, in both Greek and non-Greek states, the danger of the empty *oikos* is a persistent motif, imposing an obligation on everyone to preserve, not destroy the *oikos.* This is dramatically illustrated in the speech of the Pythia to Glaucos, when he has considered not repaying a debt:[420]

> But Oath has a son, nameless; he has no hands
> Or feet, but he pursues swiftly, until he catches
> And destroys all the family and the entire house.
>
> ἀλλ᾽ Ὅρκου πάις ἐστίν, ἀνώνυμος, οὐδ᾽ ἔπι χεῖρες
> οὐδὲ πόδες: κραιπνὸς δὲ μετέρχεται, εἰς ὅ κε πᾶσαν.
> συμμάρψας ὀλέσῃ γενεὴν καὶ οἶκον ἅπαντα (6.86γ2)

Childlessness is an archetypal misfortune in the *Histories*,[421] whereas good fortune consists in having children and grandchildren, as exemplified by Tellus (1.30). This reflects a wider perception that high fertility in the Greek and non-Greek world was to be praised; Persian men proved their manliness, after bravery in battle, by producing plenty of sons and the man who produced the most was rewarded by the king (ἀνδραγαθίη δὲ αὕτη ἀποδέδεκται, μετὰ τὸ

[420] On this passage, Johnson, 2001: 1-26; Lateiner, 2012: 167-8; Hornblower and Pelling, 2017: 202-208 - 'an exercise in irony' since teller of story, Leotychides, will himself be deposed for taking bribes.
[421] Harrison 2000: 58, 117-8 giving the examples of Croesus, Psammetichus, Panionius and Glaucos.

μάχεσθαι εἶναι ἀγαθόν, ὃς ἂν πολλοὺς ἀποδέξῃ παῖδας: τῷ δὲ τοὺς πλείστους ἀποδεικνύντι δῶρα ἐκπέμπει βασιλεύς, 1.135.1).[422]

In this chapter, I focus on the roles which both genders play in the regulation of the *oikos*, and, in my case studies, show in particular how the *nomos* of tyranny, based on orders backed up with threats, intersects with the unwritten rules of family, which regulate gender relationships within the household, and which even those who exercise power in the public sphere are not free to ignore or break. I will show what happens when tyranny becomes unfettered from those unwritten rules of family and community. The tyrant who does what he wants without heeding *nomos* puts his own *oikos* at risk. I analyse how effectively the *nomos* of tyranny controls women in the *oikos*, and how it intersects with the rules of hierarchy at the royal court, which affects both genders. I also show how Herodotus highlights ways that control is undermined or subverted by those of both genders who find ways round the formal rules, both of gender and of hierarchy. Moreover, gender norms are not fixed but can be negotiated by those, male and female, who have power to do so, as I illustrate with stories from the Spartan *logos*. In this chapter, using case studies from the Persian *logos*, I also investigate whether it is valid to regard 'the rule of law' as a bulwark against tyranny and I consider different ways in which women negotiate with tyrants through speech. My focus in this chapter is gender relationships within the *oikos*, since, as I demonstrated in my last chapter, Herodotus' concept of *nomos* is wide enough to encompass the regulation of family and social life.

[422] Thomas 2000: 89 n.31 - high fertility in the Greek world was considered a good, referring to Hesiod *WD* 235, and *Airs* ch.5.

1.1 The king as judge

The institution of tyranny, and the role of kings as judges is a dominant theme in the *Histories*. According to Herodotus' Egyptian sources, Mycerinus was the fairest of the Egyptian kings in judging legal cases (δίκας δέ σφι πάντων βασιλέων δικαιότατα κρίνειν, 2.129.1), and Deioces, king of the Medes, as noted in chapter 1, introduced his own form of written judgment. Meanwhile, in Persia, the royal judges exercised the power of life and death, as in the story of Psammenitus, when they decreed that for every Mytilinean killed, 10 leading Egyptians had to die (ταῦτα γὰρ ἐδίκασαν οἱ βασιλήιοι δικασταί, ὑπὲρ ἀνδρὸς ἑκάστου δέκα Αἰγυπτίων τῶν πρώτων ἀνταπόλλυσθαι, 3.14.5).[423] However, the royal judges themselves ran the risk of royal punishment, as is clear in the story of Cambyses, which I analyse in this chapter, when Herodotus shows that they are motivated primarily by fear, in giving legal advice. Cambyses punishes Sisamnes for taking a bribe to deliver an unfair verdict by having him flayed to death and his skin used to string a chair which his son has to sit on when he is a judge (5.25.2), a punishment which explains why the royal judges' fear is a rational response to this particular king.[424] Darius, however, imposes a similarly horrible punishment, crucifixion, on Sandoces, for accepting a bribe to decide a case unfairly, but then calculates that the man's good services to the royal house outweighed his wrongdoing (λογιζόμενος ὁ Δαρεῖος εὗρέ οἱ πλέω ἀγαθὰ τῶν ἁμαρτημάτων πεποιημένα ἐς οἶκον τὸν βασιλήιον, 7.194.2) and had him released. He did this because he realised he had acted more out of haste than wisdom (γνοὺς ὡς ταχύτερα αὐτὸς ἢ σοφώτερα ἐργασμένος, 7.194.2). In this way, Herodotus shows Darius' judgment to be more reflective and calculating than that of Cambyses, destabilising the idea that tyranny inevitably involves arbitrary punishment, but

[423] Asheri 2007: 341 calls them jurisconsults and interpreters, which is more accurate than 'judge' bearing in mind the power of the king over them.
[424] Hornblower 2013: 121 'horrible punishments explain why the royal judges are so eager to please'.

also highlighting, through the character of Cambyses, the risk of this. In the following story, however, it is a woman who exercises the power of life and death, as punishment for breaching *nomos.*

1.2 Candaules' wife as judge

In the story of Candaules, the relevant *nomos* is identified in terms of its opposite; the exposure of a queen to an unrelated male is *anomos,* and the breach of *nomos* is voiced by both Gyges and Candaules' wife. The king's actions force the queen and Gyges into an *anomos* relationship, for which the queen punishes the king using Gyges as her reluctant agent. She plans revenge for a breach both of a marital *nomos* which protects her from sexual exposure and a social *nomos* which accords her respect and status as queen. *Nomos,* therefore, is breached by the king, articulated by Gyges and enforced by Candaules' wife, who exercises the power of life and death, usually the prerogative of the king.

I analyse this scene (in the narratological sense of the word), with character speeches, and a detailed description of time, place and the unfolding of events, in terms of a network of relationships which require the performance of appropriate roles, the 'repeated actions which confer social legitimacy'.[425] Candaules and Gyges undermine that legitimacy by their actions. In this story, status as well as gender are performed. As Osborne notes, 'for both men and women, clothing and behaviour, rather than bodily form, are the main indicators of status'.[426] As I showed in the last chapter, how you are seen by others is a significant aspect of gender performance. Candaules exposes a wife and a queen but it is her status as the latter that gives her the power to punish the breach of *nomos*. Location is also significant in this story. For the

[425] De Jong 2012: 258; Bakker 2007: 16; Butler 1990: 178-9 for quotation.
[426] Osborne 2011: 64.

king, the *oikos* is the place he indulges his own voyeurism (both directly and through Gyges) but it turns out to be a dangerous place for him, because he disregards the legitimate expectations of his wife.

Candaules' infatuation with his own wife (ἠράσθη τῆς ἑωυτοῦ γυναικός, 1.8.1) leads him to think of her as the most beautiful by far of all women (ἐρασθεὶς δὲ ἐνόμιζέ οἱ εἶναι γυναῖκα πολλὸν πασέων καλλίστην, 1.8.1) and to praise that beauty excessively (τὸ εἶδος τῆς γυναικὸς ὑπερεπαινέων, 1.8.1). I agree with Gray that this characteristic is part of his excess.[427] This is the only use of ὑπερεπαινέω in Herodotus, but the ὑπερ prefix is associated more generally in Herodotus with abnormal behaviour, for example, the Thracian chieftain who blinded his own sons for disobeying his orders (ἔργον ὑπερφυὲς ἐργάσατο, 8.116.1) or Xerxes' beheading of Phoenicians during the battle of Salamis (ὑπερλυπεόμενός τε καὶ πάντας αἰτιώμενος, 8.90.3), though it can signify emotion that is extreme rather than excessive, for example the Athenians' grief at the fall of Miletus (ὑπεραχθεσθέντες, 6.21.2) and the fear of Persian invasion by some Peloponnesian states before the battle of Salamis (ὑπεραρρωδέοντες τῇ Ἑλλάδι κινδυνευούσῃ, 8.72).

The focalisation here reveals the subjective view of a man in the grip of an irrational obsession. Herodotus uses forms of ἔραμαι and ἔρως rarely in the *Histories* and the word always indicates a transgressive passion.[428] It is also used to describe Mykerinos' feelings for his daughter (2.131.1), Cambyses' for one of his sisters (3.31.2), Ariston's for the wife of Agetus (6.62.1) and Xerxes' for his brother's wife and then her daughter (9.108.1, 9.108.2). In all these instances, however, the men's *erōs* is part of a more general characterisation and a

[427] Gray 1995: 202.
[428] Powell 1938: 143 - 11 times of sexual love, twice, metaphorically, of desire for tyranny.

wider narrative. Candaules is unique in that his infatuation is not set within a wider context. His exposure of his wife to Gyges is the single action which leads to his death, an inevitable outcome which Herodotus foreshadows by stating that 'things were bound to turn out badly for Candaules' (χρῆν γὰρ Κανδαύλῃ γενέσθαι κακῶς, 1.8.2).[429] Herodotus gives us no further information about Candaules as a public figure, as king of Lydia; he is characterised solely as a person whose individual predisposition leads to a fatal outcome.[430] Events in this story also happen within the four walls of the *oikos*. This is a story, therefore, about a breach of *nomos* committed within the household, and is not linked to other aspects of Candaules' character or performance as a king or husband. This, I argue, distinguishes this story from others in the *Histories,* where gender transgression signifies breach of other rules.

This story has been analysed in part for its 'disquieting connotations of Eastern tyranny and powerful women' which, though a Lydian story, links it to the portrayal of Persian women elsewhere in the *Histories*.[431] For others, it is a means whereby Herodotus introduces themes, character types and motifs which recur throughout the *Histories*.[432] The visual aspect of this story is also emphasised. Branscome notes the repeated use of forms of *theasthai* and Travis argues that *historiē* itself is an act of looking, what he calls 'the psychology of spectation', as illustrated by this story.[433] Gould comments on the voyeurism of both Pentheus and Candaules, whilst Cairns notes a link to the visual motif throughout, and Christ gives this as one example of 'the paradox of the observer observed'.[434] Candaules' infatuation with his

[429] Munson 2001a: 40n56, noting this is a unique application of χρή to an emotional factor.
[430] Munson 2001a: 34.
[431] Baragwanath 2008: 152; Asheri 2007: 81 'though rationalised, it preserves the oriental flavour of a court tale'; Pelling 1997: 56 notes 'an oriental pattern of transgressive *eros*'.
[432] For example, 'the thoughtless ruler' (Dewald 2012: 82); 'the tragic warner' (Lattimore 1939: 25); 'the barbarian queen' (Flory 1987: 41-47); 'the unexpected request' (Gray 1995: 198).
[433] Branscome 2013: 214, 215n51; Travis 2000: 330-359.
[434] Gould 1987: 57; Cairns 1996a: 83; Christ 2013: 228n36.

wife 'has a blinding effect on him', whereas Candaules' wife is clear-sighted; she sees Gyges leaving her bedroom and knows what Gyges has done (ἐπορᾷ μιν ἐξιόντα, μαθοῦσὰ δὲ τὸ ποιηθέν ἐκ τοῦ ἀνδρὸς 1.10.2).[435] Hazewindus argues that the use of the historic present alerts the audience to the fact that her seeing him is of primary importance in the narrative. Had she not seen him there would be no violence, no change of dynasty and no Croesus.[436]

This aspect of the story is undoubtedly significant. However, the articulation of *nomos* and its breach is also an important aspect of the story, and I argue that Herodotus uses the speech of the three characters, presented as two dialogues, which is a significant element of the whole of the story, to show how speech foregrounds gender and breach of *nomos* in this story.[437] Both Candaules and Gyges speak in proverbs, an 'application of a widely accepted truth to a particular situation', but wrongly applied by Candaules.[438] In seeking to persuade Gyges to look at the queen naked, he says that ears are more unreliable than eyes (ὦτα γὰρ τυγχάνει ἀνθρώποισι ἐόντα ἀπιστότερα ὀφθαλμῶν, 1.8.2), which is true in a forensic sense (hearsay is less reliable than an eye-witness account) and is indeed a guiding principle for Herodotus in his research.[439] However, in Candaules' case he uses it to justify his own voyeurism.

In response to the king's insistence that 'you must see her naked' (ποίεε ὅκως ἐκείνην θεήσεαι γυμνήν, 1.8.2), Gyges begs him 'not to ask me to act unlawfully' (μὴ δέεσθαι ἀνόμων, 1.8.4) and replies with two proverbs of his own; 'with the removal of her clothes, a woman strips herself of shame' (ἅμα δὲ κιθῶνι ἐκδυομένῳ συνεκδύεται καὶ τὴν αἰδῶ γυνή, 1.8.3) and 'let

[435] Hazewindus 2004: 58 (quotation); Dewald 2013b: 166.
[436] Hazewindus 2004: 61.
[437] Bakker 2007: 16n.15. Using Bakker's Appendix 1 (183) Candaules speaks 134 words in direct speech, Gyges 71 and the queen 82, amounting to 39% of the whole story.
[438] Shapiro 2000: 93-95.
[439] Asheri 2007: 82.

each look on his own' (σκοπέειν τινὰ τὰ ἑωυτοῦ, 1.8.4).[440] As Baragwanath points out, the latter saying is ambiguous; is he acting out of pragmatic self-interest or acting as a foil to Candaules in declaring his compliance with *nomos*? [441] He will eventually choose to survive, suggesting the former. However, his spirited objection to Candaules' proposal also emphasises by opposition how extreme Candaules' proposal is; he is planning to dishonour his wife. It could also suggest that Gyges sees Candaules' wife as her husband's property, making any offence, therefore, against him, not his wife. Nevertheless, Gyges too cannot follow his own precepts, as he will soon do exactly what he protests so vehemently against, because he is subject to the king's power. He fails to understand that it is not the king he should fear but the queen.

At this stage in the story, Candaules' wife is portrayed solely as an object to be displayed, a 'non-person, only an element in the interaction between the men'.[442] In fact, Candaules speaks for her, to reassure Gyges:

> Do not be afraid of me, that I'm saying this to test you, or of my wife, that some harm will come to you, through her. For I will set it up so that she shall never know that you have seen her.
>
> μὴ φοβεῦ μήτε ἐμέ, ὡς σέο πειρώμενος λέγω λόγον τόνδε, μήτε γυναῖκα τὴν ἐμήν, μὴ τὶ τοι ἐξ αὐτῆς γένηται βλάβος. ἀρχήν γὰρ ἐγὼ μηχανήσομαι οὕτω ὥστε μηδέ μαθεῖν μιν ὀφθεῖσαν ὑπὸ σεῦ. (1.9.1)

[440] Rawlinson's translation.
[441] Baragwanath 2008:73.
[442] Hazewindus 2004: 55.

This is the speech of a man who acknowledges his wife's potential power and agency, but is over-confident in his own abilities to forestall it, showing no awareness of his reciprocal obligations to his wife or her capacity for independent action.

Once she appears as an actor in the story, however, she is anything but passive, submissive or ashamed, and this is apparent in her speech. When she encounters Gyges (1.11-12) she passes sentence immediately:

> One of you must die, either that man who planned this, or you, who have seen me naked and broken the rules
>
> ἤτοι κεῖνόν γε τὸν ταῦτα βουλεύσαντα δεῖ ἀπόλλυσθαι, ἢ σε τὸν: ἐμὲ γυμνήν θεησάμενον καὶ ποιήσαντα οὐ νομιζόμενα (1.11.3)

She does not try to persuade him; she forces him to make a choice between two options. She turns both men's assumptions on their head; if she is the king's exclusive property, then only one may 'own' her. She adopts a masculine role as a judge, framing the dilemma for Gyges in terms of opposites, neither of which is desirable. He either dies or he commits regicide. He is the one who tries to persuade, begging her not to force him to make this choice (ἱκέτευε μή μιν ἀναγκαίῃ ἐνδέειν διακρῖναι τοιαύτην αἵρεσιν, 1.11.3) but he fails to do so (οὐκ ὦν δὴ ἔπειθε, 1.11.4). Gyges takes it for granted that she, as a woman, is either the passive victim of a loss of αἰδώς or has removed her own shame when she undressed in his view. She, however, blames him for humiliating, dishonouring her (αἰσχυνθεῖσα, 1.10.2) and for the breach of the

rules involved in her exposure.[443] Asheri observes that Herodotus' repetition of ἀναγκαίῃ and ἀναγκαίην in 1.11.4 stresses the fatal course of events. The compulsion, however, is on the men in the story, not the woman.[444]

There is a gender element to Herodotus' use of the verb αἰσχύνω, which he uses on four occasions.[445] When used of a woman, it is associated with sexual exposure as with Candaules' wife and with Atossa, who hid her breast abscess at first out of shame (ἐπὶ τοῦ μαστοῦ ἔφυ φῦμα ... κρύπτουσα καὶ αἰσχυνομένη, 3.133.1). Herodotus describes the Babylonian custom of making women have sex with unrelated men (μειχθῆναι ἀνδρὶ ξείνῳ, 1.199.1) as their most shameful (αἴσχιστος τῶν νόμων, 1.199.1). When used of a man, shame means (a perception of) cowardice, as in the suicide by the sole survivor of the Battle of the Champions (1.82.8) and the refusal by Amompharetus to retreat from the Persians (9.53.2), considered at greater length in the next chapter. Candaules' wife's speech, if not her actions, therefore, taken in response to her sexual exposure, would be recognised by most Greeks as gender-appropriate, indeed expected, of a wife, in contrast to her husband, who is motivated by a transgressive passion, and characterised as excessive and overbearing.

The repetition of γυμνός in this passage also suggests that Herodotus wants to emphasise the transgressive nature of Candaules' proposal.[446] The only other reference in Herodotus to naked women is in Socles' speech against tyranny when he condemns Periander for stripping the women of Corinth (ἀπέδυσε πάσας τὰς Κορινθίων γυναῖκας, 5.92.η1) for the sake of his

[443] I follow Flory 1987: 30 in reading the participle in its passive rather than middle sense; she has been shamed rather than she was ashamed. An outrage has been done to her; she has not internalised the shame.
[444] Asheri 2007: 83.
[445] Powell 1938: 9.
[446] Powell 1938: 71 notes five instances in this passage.

dead wife. Both Candaules and Periander breach *nomos* in part, by failing to discriminate between women; their insult treats all women as prostitutes, to be viewed naked by someone other than a husband, and therefore as available, un-married. Cairns points out the reciprocal nature of αἰδώς as a factor in social relationships; those who show αἰδώς deserve αἰδώς.[447] In exposing his wife, therefore, Candaules fails to respect his wife's legitimate social as well as marital expectations. He attacks her social identity and status as well as violating her personal space, the boundary between herself and unrelated men, making his action 'an outrageous breach of the rules of seclusion', rules which applied to Greeks as well as non-Greeks.[448]

However, the nature of Candaules' wife's revenge, minded to punish Candaules (ἐν νοῶ ἔχουσα τίσεσθαι τὸν Κανδαύλεα, 1.10.2) marks her out, in that she becomes the agent of her own affairs. This revenge is not gender specific; the same verb is used of Harpagus who desires to take revenge (τείσασθαι ἐπιθυμέων, 1.123.1) on Astyages for the peculiarly horrible murder of his son, at a lawless feast (ἀνόμῳ τραπέζῃ ἔδαισε, 1.162.1). Van de Veen comments on the parallel between the two stories observing that both Astyages and Candaules are irrational and non-reflective in contrast with Harpagus and Candaules' wife, and it is only in these two stories that Herodotus uses the word ἄνομος,[449] suggesting an extreme breach of the rules.[450] The theme of *tisis*, the requirement to make someone pay for wrongdoing, is a common one in Herodotus, whether by individuals or by countries. [451] For example, Croesus wants to make Cyrus pay (τείσασθαι θέλων, 1.73.1) for the death of Astyages and the Scythians want to punish Darius (μεμονέναι μιν τείσασθαι, 6.84.2) for invading their lands. However, this is the only occasion when Herodotus uses this particular formulation for a

[447] Cairns 1996a: 79-83.
[448] Gould 1980: 53.
[449] Powell 1938: 29.
[450] van de Veen,1996: 38.
[451] Other examples include: 1.27, 2. 152, 3.128, 4.118, 7.8α, 8.76. Cairns 2019: 91.

woman planning revenge (ἐν νόῳ ἔχουσα τείσασθαι, 1.10.2). Candaules' wife has her mind directed towards vengeance whereas Harpagus acts out of passion, a challenge to a gender stereotype which sees women as emotional and uncontrolled, and men as rational.[452] Flory's designation of her 'private lust for revenge' is misplaced.[453] She is, rather, disconcertingly rational in planning her revenge and in control of her emotions throughout. It is Gyges who cries out (μέγα ἀμβώσας, 1.8.3) when Candaules proposes that he should view his wife naked. Moreover, Candaules' wife's ultimatum, that death must be the price to redeem honour, is a measure of the respect due to her both as wife and queen, within the *oikos,* and is not a measure of barbarian 'otherness'.[454] In fact, it reflects a similarity between Lydian and Greek customs that Herodotus himself observes (Λυδοὶ δὲ νόμοισι μὲν παραπλησίοισι χρέωνται καὶ Ἕλληνες, 1.94.1).

It is argued that Candaules' wife has a normative function[455] illustrating the consequence of male transgression or is 'an innocent and unwitting cause of a catastrophic break of social continuity'.[456] However, an analysis of speech in this story shows this woman's agency as judge, who gives an order backed up by a threat, enforcing the rule of law in its coercive sense as master. Dewald rightly observes that she exploits both Candaules and Gyges' assumptions about her and her conventional role.[457] Moreover, through her own breach of *nomos,* in using Gyges to commit regicide, she triggers political consequences after five generations, for Croesus (1.91.1).

[452] Pelling 2000: 247.
[453] Flory 1987: 32.
[454] Cairns 2019: 90-1 'death is due recompense for wrongs done to others' citing also the examples of Pheretime, Oroetes, Leotychides and Cleomenes.
[455] Lateiner 1989: 135-6; Blok 2002: 227; Dewald 2013b: 152.
[456] Gould 1989: 53.
[457] Dewald 1990: 223; 2013b: 166.

To conclude, Candaules violates the boundary between women and unrelated men, and his story shows the consequences for those who assume that they are above *nomos* and gender-appropriate responsibilities do not apply to them.[458] However, Candaules' peculiar state of mind, the *oikos* setting, with no external references, and the queen's considered and calculated act of revenge are aspects of this story which distinguish it from other scenes and character types in the *Histories*. It is notable that this woman is exceptional. Whilst she resembles other women in the *Histories*, in that she maintains control of both speech and action, understanding and interpreting the situation accurately, she is very different in assuming a quasi-judicial authority, whereby she exercises the power of life and death.

This story, therefore emphasises the coercive aspect of *nomos* but in the following stories from the Spartan *logos* we meet characters who meet legal challenges strategically.

2. Playing with the rules: Spartan family *nomoi*

Herodotus recognised the Spartans' attachment to their religious rules:

> For the Spartans give precedence to the divine over the human
>
> τὰ γὰρ τοῦ θεοῦ πρεσβύτερα ἐποιεῦντο ἢ τὰ τῶν ἀνδρῶν (5.63.2)[459]

In this section I will consider Spartan religiosity and interrogate Parker's assertion that 'the Spartans heeded divine signs and obeyed the rules'.[460] Of Parker's examples, I will consider

[458] Boedeker 2011: 231.
[459] Hornblower 2013: 187 'a precious comment on Spartan religiosity'.
[460] Parker 1989: 281-2, discussing the Glaucos story (6.86). He also cites 5.39 (story of Anaxandridas); 5.63 (expelling the Peisistratids); 5.75 (two kings not to take to the field together); 6.52 (Argeia); 6.60-66 (Ariston, Cleomenes, Demaratus); 6.79 (sacrilege of Cleomenes by burning grove of 'Argos'); 6.81-2 (trial of Cleomenes); 7.134.1 (anger of Talthybius); 7.204 and 8.131.2 (heroic ancestry of

the stories of Anaxandridas, Argeia, and Ariston, Cleomenes and Demaratus, and argue that these characters take, in fact, a rather flexible approach to some rules, whilst exploiting to the full the coercive aspect of oaths and, in one instance going so far as to bribe the Pythia. Her involvement in the Argeia story not only provides an aetiology for the dual kingship, but also shows the interaction of divine and mortal agency. In the story of Demaratus and his paternity however, the Pythia is manipulated to support one side of the dispute. The focus in all these stories is the negotiation between kingship and the constitution introduced by Lycurgus. In my analysis of the paternity dispute regarding Demaratus, I argue that it is anachronistic to read this as a formal court case. Whilst Herodotus uses quasi-legal language to identify the nature of the dispute, the involvement of Demaratus' mother is not 'giving the case for the defence' in any formal sense, but inviting his audience to consider issues of credibility and to show that, ultimately, the issue of paternity is unknowable except to the woman involved.[461] In all three stories, gender relations are central to the legal issues at stake: in what circumstances is bigamy allowable, can the rules of succession be altered, and how is a paternity dispute to be settled?[462]

The creative approach to marriage *nomoi,* and willingness to compromise, shown by Spartan royals, contrasts with the Spartans' military *nomos* which is inflexible and coercive. I argue, therefore, that a polarity approach, which emphasises the 'otherness' of Sparta, does not adequately account for Herodotus' portrayal of the Spartan royals, male and female, as negotiators, for whom *nomos* is not a coercive order in all circumstances. With regard to the

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Leonidas and Leotychides); 9.33-5 (story of Tisamenus, the diviner). See also Flower 2009: 198 citing also 6.106 and 7.206 when celebration of Karneia festival delayed Spartan involvement in military action and 9.7 when they were celebrating the festival of Hyacinthus before Plataea, and 'wanted above all to give the god his due'(περὶ πλείστου δ' ἦγον τὰ τοῦ θεοῦ πορσύνειν, 9.7.1)

[461] Lateiner 2012: 166

[462] Cartledge and Greenwood 2002: 368 on the unstable history of marriage norms in Sparta.

institution of the dual kingship, Millender takes the polarity model as the key organisational principle of Herodotus, which leads him to construct a polarity between democratic Athens and autocratic Sparta. Millender, therefore reads the dual kingship in terms of tyrannical *hubris*, based on a model of absolute rule, which is constrained to a degree by what she describes as 'the high court' of the ephors and *gerousia*.[463] She argues that the Spartan hereditary kingship conforms to the model of the barbarian autocrat in the *Histories*, and so, on matters of gender, she draws parallels between the *erōs* of Ariston and that of Candaules and Xerxes, which is also reflected in the passion for tyranny attributed to Deioces (1.96) and Pausanias (5.32).[464] She also identifies a link between 'undisciplined, dominating women and despotism' in the stories of powerful Spartan and barbarian women, so Argeia, for example, is like Atossa (7.3.4) in seeking to influence the dynastic succession, and the paternity dispute in respect of Demaratus which involves his mother as well as Cleomenes and Leotychides reflects the folklore elements of the stories of Cyrus as a child (1.110-122) and Cypselus (5.92).[465] Hansen also argues that Herodotus' viewpoint on Sparta is Athenocentric and he stresses the unusual nature of Spartan kingship, but he distinguishes between the performance of kingship at home, which he argues could be tyrannical, and the reputation of Sparta as hostile to tyranny.[466]

Hodkinson, however, argues that, though the 'aggressively polarising ideology of Athens' imperialist democracy creates the Spartan 'other'', and this is reflected to a degree in Herodotus' portrayal of Spartan *nomoi* (6.51-60), Herodotus also shows the limitations of the king's jurisdiction in Sparta to unmarried heiresses not already betrothed (6.57.4) making it

[463] Millender 2002: 1-31.
[464] Millender 2002: 1-2; 2009: 4, 16 (quotation).
[465] Millender 2002: 14-15; 2009: 7-8.
[466] Hansen 2009: 387; 402-4, citing 5.72.3-4; 6.75; 5.92.2.

less restrictive than Athens or Gortyn.[467] This makes the situation more complex than Millender's portrayal of Sparta as a 'society organised on despotic principles'. It is one in which rules, as in other Greek *poleis*, have to be negotiated, and the performance of those rules assessed by the wider Spartiate community.[468]

I will argue that the Herodotean stories on Spartans 'living with the rules' and engaging with *nomos* and gender support Hodkinson's argument that Spartan *nomos* is more complex than the *despotēs nomos* of the Spartan military male. The institutional aspect is less important than the interaction of human and divine authority, expressed through oaths, the Pythia and supplication, which is used by Herodotus to show the importance which the Spartans, he believed, attached to the divine, but to show also that they did not regard *nomos* as coercive, an order backed by threats, in all circumstances. Furthermore, I will argue that we should read in particular the story of Demaratus and his disputed parentage as based on the theme of family conflict, which is expressed in quasi-legal language, rather than as an example of despotic kingship.

I now consider how Anaxandridas negotiates marriage with the ephors, both parties 'playing with the rules', in Sibley and Ewick's terminology, though the ephors introduce an element of coercion. Spartan Kings and queens engage with *nomos*, they change it to suit their own ends and do not regard family *nomoi* as inviolable.

[467] Hodkinson 2009: 412; 437-442.
[468] Millender 2002: 11; Hodkinson 2009: 452-457.

2.1 Anaxandridas

The story of Anaxandridas of Sparta illustrates a negotiated change of *nomos*. He has married his niece but they remain childless. The ephors declare the rule that a marriage must produce an heir: 'we cannot allow Eurysthenes' line to die out' (ἡμῖν τοῦτ᾽ ἐστὶ οὐ περιοπτέον, γένος τὸ Εὐρυσθένεος γενέσθαι ἐξίτηλον, 5.39.2).[469] Anaxandridas, however, refuses to divorce his wife and remarry, as advised by the ephors; he is pleased with his wife (ἐούσης ταύτης οἱ καταθυμίης, 5.39.1) and she is blameless (ἀναμάρτητος, 5.39.2). However, matters are not allowed to escalate. The ephors, joined now by the elders, debate and put forward proposals (βουλευσάμενοι προσέφερον Ἀναξανδρίδῃ τάδε, 5.40.1) which include an element of coercion: 'Don't refuse, otherwise the Spartiates might come to an unpleasant decision in your case' (μὴ ἀντίβαινε τούτοισι, ἵνα μή τι ἀλλοῖον περὶ σεῦ Σπαρτιῆται βουλεύσωνται, 5.40.1).[470] Their proposal is that Anaxandridas is allowed to have two wives and two households, though this is not accepted Spartan practice (γυναῖκας ἔχων δύο διξὰς ἱστίας οἴκεε, ποιέων οὐδαμῶς Σπαρτιητικά, 5.40.2), and the king accepts (συνεχώρησε, 5.40.2). The parties reach a negotiated settlement, because both sides are prepared to compromise. Millender argues that Anaxandridas is 'forced to violate Spartan custom' and is motivated by an 'excessive attachment' but I do not think the text justifies this reading.[471] It is because he is not driven by *erōs* that he can reach an accommodation with the ephors, who are prepared, for their part, to take a flexible approach to Spartan *nomos*, to solve the potential problem of the empty *oikos*. Anaxandridas' marriage offers a model of compatibility, like that of Masistes, who tells Xerxes that '[my wife] suits me perfectly well' (αὐτή τέ μοι κατὰ νόον τυγχάνει κάρτα ἐοῦσα, 9.111.3) which contrasts with those relationships based on transgressive *erōs.*

[469] Hornblower 2013: 150, the word ἐξίτηλον is found only here and in the proem and reflects an anxiety about extinction (in this example, in the *oikos*).
[470] Hornblower 2013: 151 on ἀλλοῖον as a euphemism for 'something unpleasant'
[471] Millender 2002: 16-17.

This story, I argue, shows both the king and the ephors and *gerousia* adopting a pragmatic approach to *nomos*, which is negotiable and changeable. This is presented by Herodotus not as a constitutional check on monarchy but as a debate between the king and the ephors, which results in an agreed compromise, a model of law which does not fit the adversarial one of competing narratives, where one party succeeds in defeating the claim of the other. However, there is a coercive element to the negotiations. The ephors can threaten consequences if Anaxandridas does not cooperate, making it different from the despotic model of tyranny, and showing that the Spartan kingship is subject to a degree of restraint.

2.2 Argeia and the twins

In this story, the change of *nomos* is not negotiated but arises because of the mother's actions. The Spartans plan to make the older of the twin sons of Argeia and Aristodemus king according to the rules (κατὰ νόμον βασιλέα τῶν παίδων τὸν πρεσβύτερον ποιήσασθαι, 6.52.3). Their mother, however, attempts to manipulate circumstances to achieve an end which is not κατὰ νόμον. In Herodotus' account, she 'claims not to know which son was born first though in truth she does, because she wants both to become king' (τὴν δὲ οὐδὲ αὐτὴν φάναι διαγινώσκειν: εἰδυῖαν μὲν καὶ τὸ κάρτα λέγειν ταῦτα, βουλομένην δὲ κως ἀμφότεροι γενοίατο βασιλέες, 6.52.4). Herodotus thus emphasises the woman's calculated planning and the Spartans' helplessness (ἀπορέειν, ἀπορέοντας ... ἀπορέουσι, 6.52.4-6) in the face of her deception. They consult the oracle at Delphi who says they should make both boys king but give greater honour to the elder (ἀμφότερα τὰ παιδία ἡγήσασθαι βασιλέας, τιμᾶν δὲ μᾶλλον τὸν γεραίτερον, 6.52.5). We see here the interaction, therefore, of divine authority and human agency, because the oracle needs interpretation. The Spartans have to work out which is the

elder child by watching the mother to see which of the twins she feeds and washes first (τιμῶσαν τὸν πρότερον καὶ σίτοισι καὶ λουτροῖσι, 6.52.7). The irony, therefore, is that Argeia achieves her aim but at a cost. Though she refuses to identify the older twin, she nevertheless reveals his identity to the Spartans. As a result, he was brought up by the state (τρέφειν ἐν τῷ δημοσίῳ, 6.52.7), not at home.[472] This caused a family feud which persisted until Herodotus' day (6.52.8) and explains the dispute between the twins' descendants Cleomenes and Demaratus, which is the backdrop to a paternity dispute.

The Argeia story differs from that of Anaxandridas in that it involves the Pythia and Argeia is not in a position to negotiate on behalf of her sons. She has knowledge, however, which she is not prepared to share, requiring the Spartans to devise a means of interpreting her actions to remedy her calculated silence. In these circumstances, silence, not speech, gives a woman power to influence the succession. This, I suggest, is very different from Atossa, who is able to achieve the kingship for Xerxes because of her powerful position in relation to Darius:

> I think Xerxes would have been made king even without [Demaratus' advice] advice, for Atossa was all powerful
>
> δοκέειν δέ μοι, καὶ ἄνευ ταύτης τῆς ὑποθήκης βασιλεῦσαι ἂν Ξέρξης: ἡ γὰρ Ἄτοσσα εἶχε τὸ πᾶν κράτος (7.3.4)

2.3 Who is the father? Demaratus and a paternity dispute

Ariston is aggravated by *erōs* (ἔκνιζε ἄρα τῆς γυναικὸς ταύτης ὁ ἔρως, 6.62.1), which I have already identified as a transgressive passion. He also acquires his wife through an exchange of oaths with her existing husband Agetus (ἐπὶ τούτοισι δὲ ὅρκους ἐπήλασαν, 6.62.1) promising

[472] Hornblower and Pelling 2017: 156.

to give each other whatever each requests. Agetus is forced by his oath and Ariston's deceitful trick to hand over his wife (ἀναγκαζόμενος μέντοι τῷ τε ὅρκῳ καὶ τῆς ἀπάτης τῇ παραγωγῇ ἀπιεῖ ἀπάγεσθαι, 6.62.2). Ariston then swears on oath (ἀπομόσας, 6.63.2) that the child born seven months later is not his. Herodotus, therefore, signals that *erōs* and oaths are significant aspects of this story in contrast with the previous two stories.

Cleomenes, who had his own desire for revenge (ὁρμηθεὶς ὧν ἀποτίνυσθαι, 6.65.1) persuades Leotychides to swear an oath (κατόμνυται, 6.65.3) that Demaratus was not entitled to be king as he was not the son of Ariston (οὐκ ἱκνεομένως βασιλεύειν Σπαρτιητέων, οὐκ ἐόντα παῖδα Ἀρίστωνος, 6.65.3). He based his claim (ἐπιβατεύων, 6.65.4) on Ariston's denial of paternity after Demaratus' birth, producing as witnesses the ephors who heard Ariston's original denial (6.65.4). Was this a formal prosecution? This is certainly how it is presented by Waterfield in his translation.[473] Leotychidas 'swore a complaint' (κατόμνυται, 6.65.3) against Demaratus and 'followed up this affidavit by prosecuting Demaratus in court' (μετὰ δὲ τὴν κατωμοσίην ἐδίωκε, 6.65.3). After 'the legal battle raged back and forth' (ἐόντων περὶ αὐτῶν νεικέων, 6.66.1), the case is referred to the Pythia. However, as Hornblower and Pelling say, 'ἐδίωκε may suggest a formal legal prosecution but could be used metaphorically to mean 'persecuted' (Powell) or 'hounded''.[474]

My interpretation is that, whilst Herodotus may intend to give a 'legal flavour'[475] to these proceedings we cannot read it as a formal trial, because of the way Herodotus structures this paternity dispute. When Herodotus relates that the Spartans referred the matter to the Pythia,

[473] Waterfield 1998: 374
[474] Macan 1895: 324; Hornblower and Pelling 2017: 173.
[475] Hornblower and Pelling 2017: 199

in what sense is this a 'legal battle'? To use legalistic terminology, we only get 'the case for the defence' later in the story when Demaratus interrogates his mother to find out her account of his parentage, a meeting which of course does not take place in court, but involves an act of supplication, more oaths, and a hero figure, all of which gives the story a religious rather than a legalistic flavour. I read this passage, therefore, as one in which any institutional involvement is much less significant than the use of oaths, the referral to a Pythia, who on this occasion is corrupt, and an act of supplication, all of which signal both the Spartans' religiosity and the contradictions inherent in that, when some royals, both male and female, exploit the power of these engagements with the gods.

This passage illustrates both the coercive power of oaths, and the way they can be used as a tool to achieve a particular outcome. Agetus commits to a blind oath, which, as Braund notes, is risky because he is then forced (ἀναγκαζόμενος) to hand over his wife, but Ariston exploits the oath to get what he wants. [476] When the case was referred to the Delphic Oracle because the protagonists kept quarrelling (ἐόντων περὶ αὐτῶν νεικέων, 6.66.1) Herodotus makes it clear that the Pythia was being manipulated for political purposes; she was bribed to give the answer Cleomenes wanted (τὰ ἐβούλετο λέγεσθαι λέγειν, 6.66.2), namely that Demaratus was not Ariston's son. When found out, she lost her office (ἐπαύσθη τῆς τιμῆς, 6.66.3) but that did not stop Demaratus being deposed as king, which was Cleomenes' aim.

The scene between Demaratus and his mother starts with an act of supplication: having offered an ox to Zeus 'he placed some of the entrails in her hands and supplicated her'(ἐσθεὶς

[476] Braund 1998: 171. Bayliss 2009: 257 with parallel to story of Atossa who took a risk in 'committing herself blindly to recipocity' in her oath to Democedes.

ἐς τὰς χεῖράς οἱ τῶν σπλάγχνων κατικέτευε, 6.68.1).[477] Herodotus then emphasises the act with a statement in direct speech by Demaratus to his mother: 'I supplicate you, appealing to all the gods, and especially Zeus of the household' (θεῶν σε τῶν τε ἄλλων καταπτόμενος ἱκετεύω καὶ τοῦ ἑρκείου Διὸς τοῦδε, 6.68.1). Naiden defines supplication as 'a quasilegal practice consisting of four steps – an approach made by the suppliant, his use of a gesture or word, his presentation of a request, and a response by the party entertaining the request, the supplicandus'.[478] I think therefore that Herodotus intends this scene to have a religious as well as a legal flavour. It also functions as a response to the allegation of Leotychides, that his father was either his mother's former husband (κυέουσάν σε ἐκ τοῦ προτέρου ἀνδρὸς) or, more insultingly (τὸν ματαιότερον λόγον), one of the household's donkey-keepers (τῶν οἰκετέων τὸν ὀνοφορβόν, 6.68.2).

Demaratus claims to want the truth (τὴν ἀληθείην, 6.68.1) and a straight answer to his question: who really is my father? (τίς μευ ἐστὶ πατὴρ ὀρθῷ λόγῳ, 6.68.1). His mother relates her visitation by a phantom (φάσμα, 6.69.1) who put garlands round her neck, and her subsequent conversation with Ariston, when she swore (ἐγὼ δὲ κατωμνύμην, 6.69.2) that he had given her the garlands. This oath persuaded him that there was divine intervention (ὁρέων δέ με κατομνυμένην ὁ Ἀρίστων ἔμαθε ὡς θεῖον εἴη τὸ πρῆγμα, 6.69.2-3).

His mother promises to tell Demaratus the whole truth (πᾶν ἐς σὲ κατειρήσεται τὠληθές, 6.69.1) and assures him at the end of her speech that this is what he has been told (τὰ γὰρ ἀληθέστατα πάντα ἀκήκοας, 6.69.5). Her explanation is that either Demaratus was born premature, at seven months, and Ariston had spoken out of ignorance (ἀνοίῃ, 6.69.5) when he

[477] Hornblower and Pelling 2017: 177 for translations in this paragraph.
[478] Naiden 2006:1.

said he could not be the father, or he was the child of a phantom who looked just like Ariston but turned out to be Astrobacus, a hero from Spartan myth. Hornblower and Pelling, I think rightly, wonder 'whether this three-times repeated promise to be telling the truth might be overdoing it'.[479] There is a suggestion that the mother protests too much, in defence of her own status and reputation, but in the context of the *oikos*, not a court case. This story explores issues of credibility and shows that some questions are unanswerable. Though Herodotus stages for us the dispute between the parties, the issue of paternity is not resolved. These three Spartan stories all show characters, male and female, who regard *nomos* as flexible, and changeable, rather than being the *despotēs nomos* which Demaratus explains to Xerxes.

Does this also apply to the *nomos* of tyranny? I now consider stories from the Persian *logos* where living with the rules means living with a tyrant. To what extent is he bound by reciprocal obligations? What rules bind kings as well as subjects? What happens when tyrants act without constraint, as Cambyses does when he assaults his wife/sister? To what extent are gender relations a sounding board for thinking about power, excess and arbitrary power?

3. The Persian *oikos*

In the *Histories*, the word *oikos* is used in three ways: firstly, as the king's household, the place where he exercises power, as well as establishes his dynasty; secondly, as a building or property, for example, when Darius gives Metiochus a house, property and a Persian wife (6.41.4), and Democedes is said to own a very fine property (3.132.1); thirdly, as a household, including family members. For example, Nitocris is the only member of Amasis' *oikos* left (3.1.3), the thief from Rhampsinitus returns with his brother's head to his mother in the *oikos*

[479] Hornblower and Pelling 2017: 179.

(2.121.β2), and Amestris sends Masistes' mutilated wife back to her husband and *oikos* (9.112).[480]

As the king's household, the *oikos* clearly has significance both politically and rhetorically. It is the place where most influential interviews would take place, and where people, male and female, would have to negotiate their relationship with the king, but also exercise some agency as advisors. I have already shown that the danger of the empty *oikos* is a persistent motif in the *Histories,* imposing an obligation on everyone to preserve, not destroy the *oikos.* Conversely, there is a strong message in the *Histories* that kinship and family bring good fortune; Tellus the Athenian is the example given by Solon of a fortunate man, in part because he had good and noble sons who themselves all had children who survived (Τέλλῳ τοῦτο μὲν τῆς πόλιος εὖ ἡκούσης παῖδες ἦσαν καλοί τε κἀγαθοί, καί σφι εἶδε ἄπασι τέκνα ἐκγενόμενα καὶ πάντα παραμείναντα, 1.30.4).[481]

The preservation of the royal *oikos* is of great significance therefore, since it is not only a dynastic base but also a centre of power. Darius promises a reward to Coës of Mytilene, for his advice to keep the pontoon bridge over the Hellespont in place 'when I get home safe and sound'(σωθέντος ἐμεῦ ὀπίσω ἐς οἶκον τὸν ἐμὸν, 4.97.6) and Xerxes orders Artabanus to return to Susa to protect his household and kingdom (σῶζε οἶκόν τε τὸν ἐμὸν καὶ τυραννίδα τὴν ἐμήν, 7.52.2). Consequently, the security of the king's house is used as a persuasive strategy by characters in the *Histories*, to warn of the risks some men are taking.

[480] King's house: 16; house as property: 5; household/family: 11; temple of gods; 1. 4 times used twice of the same *oikos*. Other examples where a physical space is meant: 2.35.2-3; 4.172.2; 7.104.2; 8.137.4; 9.116.2-3; 7.224.2. Other examples of household including family: 1.188.1; 3.65.2; 3.79.3; 6.39.2; 6.130.2; 7.118

[481] Thomas 2000: 89 n.31.

It is also a way to signal loyalty to the king; for example, when Croesus addresses Cyrus before his battle with the Massagetae, he seeks his goodwill through identifying threats to his *oikos*:

> 'O King, I told you before, when Zeus gave me to you, that I would do all I could to avert any catastrophe I saw threatening your house.'
>
> 'ὦ βασιλεῦ, εἶπον μὲν καὶ πρότερόν τοι ὅτι ἐπεί με Ζεὺς ἔδωκέ τοι, τὸ ἂν ὁρῶ σφάλμα ἐὸν οἴκῳ τῷ σῷ κατὰ δύναμιν ἀποτρέψειν' (1.207)

When Artemisia speaks to Xerxes, after the defeat at Salamis, urging him to return to Persia, she points out that, even if things go wrong for his general Mardonius 'it will be no disaster as regards your survival and the prosperity of your house'(οὐδεμία συμφορὴ μεγάλη ἔσται σέο τε περιεόντος καὶ ἐκείνων τῶν πρηγμάτων περὶ οἶκον τὸν σόν, 8.102.2). Meanwhile Masistes condemns Artayntes for Persian defeat, saying no punishment was too severe for the harm he had done the king's house (καὶ ἄξιον εἶναι παντὸς κακοῦ τὸν βασιλέος οἶκον κακώσαντα, 9.107.1).

In this way, Herodotus signals through speech both the importance of preserving the *oikos* and the risks to its security that both Cyrus and Xerxes pose. There is an ironic import to these speeches in that Croesus' advice to Cyrus leads to the king's destruction at the hands of Tomyris, and both Artemisia and Masistes both speak on behalf of a king who will go on to destroy his own extended family. This is because, I argue, men sometimes fail to recognise that women speak with authority on matters pertaining to the *oikos*, they have a stake in it, they have legitimate expectations within it and they observe the dangers of the empty *oikos* more clearly than men, in some circumstances, as the following case studies illustrate.

3.1. Cambyses and his sister/wife

The following story shows that a tyrant who does what he wants without heeding *nomos* puts his own *oikos* at risk. Cambyses is accused by his sister/wife of 'stripping the house of Cyrus as bare as a lettuce'(ταύτην μέντοι κοτὲ σὺ τὴν θρίδακα ἐμιμήσαο τὸν Κύρου οἶκον ἀποψιλώσας, 3.32.4) and his subsequent attack on her completes the act, because he kills not only her but also her unborn child.

Like Candaules and Ariston, Cambyses' feelings were transgressive. In his case, he was in love with his sister and wanted to marry her, which Persian rules did not allow (ἠράσθη μιῆς τῶν ἀδελφεῶν Καμβύσης, καὶ ἔπειτα βουλόμενος αὐτὴν γῆμαι, ὅτι οὐκ ἐωθότα ἐπενόεε ποιήσειν, 3.31.2). The form of endogamy whereby brothers marry sisters is, according to Brosius, likely to be a function of Cambyses' madness and failure to respect custom and moral boundaries.[482] Unlike Candaules, however, he takes legal advice but what follows is a travesty of legal process. He consults the royal judges whose job is to adjudicate lawsuits for the Persians and interpret ancestral laws and customs:[483]

> They found a rule that the king could do whatever he wanted. Thus, they did not break the rule, though they were afraid of Cambyses, and, so that they would not be killed for maintaining the rule, they found another rule assisting someone who wanted to marry sisters.
>
> ἐξευρηκέναι νόμον, τῷ βασιλεύοντι Περσέων ἐξεῖναι ποιέειν τὸ ἂν βούληται. οὔτω οὔτε τὸν νόμον ἔλυσαν δείσαντες Καμβύσεα, ἵνα τε μὴ αὐτοὶ ἀπόλωνται τὸν νόμον

[482] Brosius 1996: 45.
[483] Persian royal decrees were in writing and retained. *CAH* iv 87.

περιστέλλοντες, παρεξεῦρον ἄλλον νόμον σύμμαχον τῷ θέλοντι γαμέειν ἀδελφεάς. (3.31.4-5).

Asheri reads this story as resembling a Greek sophistic argument of the sort found in the *Dissoi Logoi* to illustrate the relativism of human customs.[484] However, I think it functions as a description of a tyrant, someone for whom *nomos* means unbridled licence. A king who can do whatever he likes has unfettered power, he is not constrained by any rules. The institution of the royal judges is demonstrated to be no kind of check on this king. It is part of a characterisation of Cambyses as violent and insane, leading him to kill his brother Smerdis and later his wife/sister, whose killing follows on from the careful and prudent adjudication by the Persian judges which legitimises the king's wishes and emphasises the dangers of speaking out against the king. However, it also presents us with an alternative unwritten *nomos,* as voiced by the sister/wife, who sees it as part of the king's role to preserve, rather than destroy the royal *oikos*. Her words also carry a degree of dramatic irony in that Cambyses' actions kill his only potential heir, thus 'stripping' his *oikos* completely.

In juxtaposing the manipulation of *nomos* by the Persian judges with the spoken protest of the sister/wife, Herodotus gives emphasis to his own judgment on Cambyses; 'It is, in every way, clear to me that Cambyses was completely mad; otherwise he would not have kept on laughing at religion and rules' (πανταχῇ ὦν μοι δῆλα ἐστὶ ὅτι ἐμάνη μεγάλως ὁ Καμβύσης: οὐ γὰρ ἂν ἱροῖσί τε καὶ νομαίοισι ἐπεχείρησε καταγελᾶν, 3.38.1). Otanes in the Constitutional Debate, arguing against tyranny, puts in general terms what Cambyses has already done; changed ancestral rules, used force on women and killed men without trial (νόμαιά τε κινέει

[484] Asheri 2007: 430-1.

πάτρια καὶ βιᾶται γυναῖκας κτείνει τε ἀκρίτους, 3.80.5). West comments on his 'terrifying combination of malice, paranoid policies and a sadistic sense of humour' and his lack of regard for either Persian or Egyptian *nomoi*.[485] Thus, Cambyses is shown to disregard the rule of law, and the role of his sister/wife, therefore, is to act as a foil, reminding him of his duty to preserve, not destroy the *oikos.* Cambyses, by contrast, destroys his own *oikos* through his assault on her. The story does not emphasise her power; rather the reverse, it indicates female vulnerability in a dangerous *oikos*. This is also the case in my next case study, though in this story the vulnerability is to female cruelty and violence.

3.2 Xerxes and his oikos

The next story I analyse concerns the intersection of power and gender transgressions at Xerxes' court. Boedeker reads this story as a family drama, an extreme example of troubled Persian gender relationships, whereas Sancisi-Weerdenburg argues that it has a political import, in that Artaynte's request for the king's robe is a bid for the kingship itself on behalf of her maternal family, making Amestris' revenge on her mother a form of punishment for rebellion.[486] Brosius shows how this story in particular can be used to fit an ideology in which royal Persian women are portrayed as cruel, violent, vengeful and exercising power over the king, to draw a contrast with Athenian women who are excluded from both military and juridical policy.[487] I will argue that in this story, as in others I consider in this chapter, there is a breach of *nomos* by Xerxes, Artaynte and Amestris which relates to marital and family *nomoi*, but that Herodotus problematises a reading which fits the ideological construct of the

[485] West 1999: 124.
[486] Boedeker 2011: 220-221. Sancisi-Weerdenburg 2013: 143-145.
[487] Brosius 1996: 1-8, 113.

'barbarian royal' by showing other characters in these stories who model appropriate reciprocity and due respect for the rule of law.

There are unquestionably some parallels between the story of Candaules, and the final story in the *Histories*, of Amestris' revenge for her husband Xerxes' adultery (9.108-113). In this story as well there is a specific authorial interjection warning us of the outcome for Artaynte and her family (τῇ δὲ κακῶς γὰρ ἔδεε πανοικίῃ γενέσθαι, 9.109.2); both she and Candaules display what is not theirs to show off. Artaynte not only wears the cloak made for Xerxes by his wife, she flaunts it (ἐφόρεέ τε καὶ ἀγάλλετο, 9.109.3).[488] The description of her feelings (περιχαρὴς ἐοῦσα τῷ δώρῳ, 9.109.3) is also an indication, as in other stories, of joy that is excessive and that will be followed by disaster.[489] Both Candaules and Xerxes are motivated by *erōs*, which, as noted above, is a rare emotion in Herodotus, associated with transgression.

However, the word has a different connotation in the two stories. Candaules is obsessed with his wife's appearance, Xerxes desires sexually (ἤρα, 9.108.1; 9.108.2) first his brother's wife, then his niece. The text emphasises that *erōs* in this context is associated with rape. All that protects Masistes' wife from being forced to have sex with Xerxes (βίην προσέφερε ... βίης οὐ τευξομένη, 9.108.1) is his respect (προμηθεόμενος, 9.108.1) for his brother. Even the king's written attempt to persuade her has a connotation of force (προσπέμποντι οὐκ ἐδύνατο κατεργασθῆναι, 9.108.1). In the Constitutional Debate, Otanes lists rape (βιᾶται γυναῖκας, 3.80.5) as one of the three things wrong with monarchy; Masistes' wife is only safe from sexual assault because of her status as Xerxes' sister-in-law.

[488] The use of the imperfect makes it clear that she does this repeatedly.
[489] Chiasson, 1983: 115-118 - περιχαρὴς is 'an ominous word in Herodotus'. See p.63 for other examples.

Another characteristic of monarchy which Otanes identifies in the Constitutional Debate is the subversion of rules (νόμαιά τε κινέει πάτρια, 3.80.5). We see this in this story in that all three characters, Artaynte, Amestris and Xerxes attempt to manipulate *nomos* for their own purposes. Xerxes at first exploits the 'usual rites of marriage' (τὰ νομιζόμενα, 9.108.2) to arrange a marriage between Artaynte and his son Darius, which will give him greater access to his brother's wife.[490] He is, however, forced by the custom of the royal feast (ὑπὸ τοῦ νόμου ἐξεργόμενος, 9.111.1) to accede to Artaynte's request for the cloak made for him by Amestris, and to his wife's request for Masistes' wife. In this story there is also the paradox that, whilst Xerxes has the nominal power of the tyrant, he is subject to the actual power of women. We see Xerxes at court, unable to compel Masistes' wife, unable to persuade Artyante not to demand the cloak (οὐ γὰρ ἔπειθε, διδοῖ τὸ φᾶρος, 9.109.3) and at his most impotent when he accedes to Amestris' request, though he nods consent (κατανεύει, 9.111.1) like a god.[491]

In both stories, another man acts as a foil to the king. Gyges is characterised as special to Candaules, but fails to argue against the king's order, and is then astonished when the queen gives a command of her own (τέως μὲν ἀπεθώμαζε τὰ λεγόμενα, 1.11.3). Masistes too has proved himself loyal to his brother the king in castigating the Persian commander Artayntes for the defeat at Mycale (ἄξιον εἶναι παντὸς κακοῦ τὸν βασιλέος οἶκον κακώσαντα, 9.107.1) but is himself shocked at the king's order to divorce his wife (ἀποθωμάσας τὰ λεγόμενα, 9.111.3), horrified at her mutilation and ultimately attempts a coup in Bactria (ἀποστήσων νομὸν τὸν Βάκτριον καὶ ποιήσων τὰ μέγιστα κακῶν βασιλέα, 9.113.1), an ironic outcome in

[490] Flower and Marincola, 2002: 294 who note the irony in Xerxes performing these rites when he is acting παρὰ νόμον.
[491] Flower and Marincola, 2002: 297.

the light of his previous loyalty.[492] Blok notes that Masistes, unlike Xerxes, is faithful to his wife, is a good father, and is a successful soldier and leader whom the Bactrians and Sacians love (ἔστεργόν τέ μιν, 9.113.2) and whom Xerxes himself recognises as a good man (ἀνὴρ ἀγαθός, 9.111.2).[493]

When we consider the parallels between the two stories from the perspective of the women involved, however, the differences stand out. Larson suggests that Herodotus suppresses the names of both Candaules' and Masistes' wives out of 'concern for personal reputation that both blameless wives exhibit'.[494] I do not accept that Candaules' wife is 'blameless'. Rather, she upholds a notion of honour that is based on retribution *(tisis*). We now consider the *lex talionis* to be a primitive form of justice but it is based on a notion of fairness as long as the right person is punished. She blames both Candaules and Gyges for dishonouring her and so one of them must die. By contrast, Masistes' wife is the victim of an erroneous assumption by Amestris that she is to blame for her daughter's possession of the cloak (ἐλπίζουσα τὴν μητέρα αὐτῆς εἶναι αἰτίην, 9.110.1).[495] Masistes' wife is innocent, but tortured nevertheless. As Gray says 'Amestris' mutilation of a woman who had protected her own marriage bed in the interests of Amestris' marriage bed is a grim irony'.[496] It also fits with a concept of barbarian 'otherness' in being cruel and arbitrary. The third problem with monarchy according to Otanes is killing men without trial (κτείνει τε ἀκρίτους, 3.80.5). Xerxes' whipping of the Hellespont, his injunction to his men (λέγειν βάρβαρά τε καὶ ἀτάσθαλα,

[492] Flower and Marincola, 2002: 298.
[493] Blok, 2002: 312.
[494] Larsen, 2006:239.
[495] Powell, 1938: 151 notes that in all ten uses of ἐλπίζουσα in the sense of 'supposing' in Herodotus, the supposition is wrong.
[496] Gray, 1995:199.

7.35.2) and his beheading of the bridge supervisors (ἀποταμεῖν τὰς κεφαλάς, 7.35.3) echo the arbitrary nature of Amestris' revenge.

There is also a parallel between Xerxes and Amestris in that, whilst he is motivated by *erōs*, she devises a sexual aspect to the mutilation of Masistes' wife, cutting off her breasts, lips and tongue as well as her ears and nose. The use of the present tense in this passage (διαλυμαίνεται ... ἀποπέμπει, 9.112) gives the narrative an immediacy which adds to the horror. Xerxes also knows his wife well enough (φοβεόμενος δὲ Ἄμηστριν, 9.109.3) to fear the consequences of giving Artaynte the cloak and understands why Amestris asks for Masistes' wife as a gift (συνῆκε γὰρ τοῦ εἵνεκεν ἐδέετο, 9.110.3). Her mutilation of this woman comes as no surprise. Amestris fits Flory's definition of the barbarian queen.[497] She is clever, in exploiting the *nomos* of the royal feast which requires the king to accede to all requests, she has a personal and family motive, she plans carefully and the nature of her revenge is horrible and bloody. However, men are also capable of mutilation and bloody revenge, as the story of Astyages and Harpagus shows, and as Xerxes himself displays in relation to Pythius (7.38-9).

Amestris represents barbarian 'otherness' in a household where abuse of power is associated with the manipulation of *nomos*, and where relationships, both between women and between women and men, are transgressive save for the marriage between Masistes and his wife, where the narrative emphasises compatibility (αὐτή τέ μοι κατὰ νόον τυγχάνει κάρτα ἐοῦσα, 9.111.3) and mutual loyalty. This relationship based on reciprocity serves to highlight the abnormality of one based on abuse of power and authority or *erōs*. I conclude that the

[497] Flory, 1987: 41-47.

characterisation of both Xerxes and Amestris in this story is one of barbarian excess, cruelty and arbitrariness, which creates a sense of unfairness that both king and queen 'get away with it', whilst the *oikos* of Masistes is destroyed. Xerxes, Amestris and Artaynte all seek to manipulate various types of *nomoi*, show a lack of constraint, and act beyond the boundaries of *nomos* as a force which regulates behaviour. These motifs are also present in the following story about another tyrant who, like Cambyses, destroys his own *oikos*.

3.3 Cyrus, Astyages and Cyno

Scholars have identified the mythic and dramatic elements in this story, both in technique and in subject matter, in contrast with the story of Deioces and the establishment of the Median tyranny.[498] Pelling notes the dramatic use of speech, and the theme of the divided *oikos*, with Harpagus being presented as a blood-relative to the royal house (1.108.3, 109.3); consequently, Harpagus' part in the planned murder of the infant Cyrus and Astyages' murder of Harpagus' son both appear as internal familial crimes.[499] The murder of kin, familial violence, the echoes in Astyages' banquet, when he serves up Harpagus' son's dismembered body to his father (1.119), of the myth of Atreus and Thyestes, and the exposure and survival of a king-child, certainly have a mythic quality. Moreover, the epic and tragic resonances are appropriate for Herodotus' theme of familial conflict and the creation of a divided *oikos*. It is not surprising, therefore, that Herodotus explores Astyages' breach of *nomos* in his lack of respect for family and kin through stories which recall mythical exempla for his audience. As

[498] How and Wells 1928:109; Pelling 1996:74n.29; Saïd 2002:128-9; Baragwanath 2008:150n.81; Chiasson 2012: 213-232 both myth and tragedy in the punishment of Harpagus and fraternal violence (they are *oikeioi* 1.108.3); 221-4 on the 'heroic paradigm of cruelty and suffering beyond mere human capacity'; Asheri 2007: 160.

[499] Pelling 2006:76, 104n.4 noting 19 passages of direct speech; Asheri 2007: 156 for series of dialogues contributing to dramatic effect.

Gray argues, existing stories, part of an oral tradition, were developed to reflect contemporary concerns and were intended to be thought provoking.[500]

For Van de Veen, however, Herodotus emphasises the contrast between those, like Cyno, who show a commitment to *nomos* and the continuation of the *oikos*, and those characters like Astyages, Harpagus and Mitradates who are all motivated by safety and prepared to kill a child to achieve this. He points out the significance of grandchildren in the *Histories*, making Astyages' conduct abnormal, whereas the motivation of both Cyno and Mitradates is care for family and concern for each other. Astyages, by contrast, humiliates his daughter, tries to kills her child and is not even concerned for a proper burial. Harpagus is only concerned that he is not blamed and violates family loyalty too, and when he is made to eat his own son, his revenge is to get the grandson to take power from his grandfather. In this way the story is told in terms of dysfunctional family relationships.[501] Blok and Fisher also read this story in terms of Cyno defending normality (as moral and tradition) against irresponsible transgression by Astyages, who goes against values of family feeling and succession.[502] My reading of this story is similar, though I put more emphasis on the rules which function within families either to protect or violate the rule of law.

For Dewald, the whole account is structured to emphasise the improper devolution of authority, making Cyno the only actor who is prepared to voice her judgment on the situation and take responsibility for acting.[503] Munson observes the human agents of compulsion (*anankē*) in both Median stories: Deioces compels the Medes, Harpagus compels Mitradates

[500] Gray 2002: 316.
[501] Van de Veen 1996: 23-52.
[502] Blok 2002: 227-8; Fisher 1976: 6-9; 2002: 208.
[503] Dewald 2013b: 168-9.

and Astyages then compels Mitradates to tell the truth. She argues that the ways in which kings go about honouring *nomos,* or the special *nomoi* of kings (including monarchy itself as a *nomos*) have special, negative, status in Herodotus and they often come into conflict with the normal way of things and with a people's traditional *nomoi*. Herodotus' narrative 'delineates an opposition between the constraint of law, custom or moral obligation on the one hand, and despotic compulsion on the other, so that frequently to accept the one means rejecting the other'.[504]

I argue that this opposition is not as much of a polarity as Munson suggests, that Herodotus shows the limits of despotic compulsion, in that some of his characters, male and female, adopt a strategic rather than a passive approach to the tyrant, and others evade or subvert his power. Moreover, tyrants themselves vary in the extent to which they accept the *nomoi* of family and the *oikos*. I have shown that Deioces creates a form of rule of law, in that he successfully tackles lawlessness for the Medians, and I will argue in this chapter that Darius brings his own preconceptions of the appropriate unwritten laws of family to his dealings with Intaphrenes' wife. Astyages, however, like Cambyses, destroys his own *oikos,* thereby violating the rule of law.

Firstly, he ignores the expectations of him as father and grandfather; the threatening aspect of kin is emphasised right from the start of the narrative.[505] Mandale is seen by her father as a threat following his dream of her flooding Asia with urine (1.107), which is interpreted by the Magi in a way that terrifies him (ἐφοβήθη, 1.107.1). However, he then unwittingly causes the event he fears by marrying her to her social inferior, the Persian Cambyses, and then plotting

[504] Munson 2001a: 36-45.
[505] Boedeker 2011: 213.

to kill her son when Mandale becomes pregnant and he learns that her offspring will rule instead of him (ἀντὶ ἐκείνου, 1.108.2).[506] He thereby acts against the rule that the objective of marriage is to transmit social identity and status, to maintain social and kinship networks and to provide heirs, as his own marriage to Aryenis was itself aligned to a peace treaty between the Lydians and the Medes (1.74).[507] Even though his daughter fulfils her female role and produces a male heir, her son is at risk because of dynastic considerations and the creation of a divided *oikos* by Astyages himself who marries her to a foreigner out of fear, not as a calculated marriage alliance.[508] As with Xerxes and his marriage of Artaynte to his son Darius, the motivation is significant because it signals transgression, violating the rules.

Astyages' command to Harpagus to kill Mandale's baby (1.108.4) and Harpagus' command to Mitradates (1.109.3) to carry out the order illustrates one of the legacies of Deioces' rule, namely the habit of using intermediaries to carry out orders in a hierarchy of command.[509] There is no attempt to persuade; Astyages gives orders, backed up by threats, unspecified in the case of Harpagus, who is told not to bring about [his] own downfall (ἐξ ὑστέρης σοὶ αὐτῷ περιπέσῃς, 1.108.4) and all too specific in the case of Mitradates, who is threatened with torture if he disobeys orders. In this scene, Astyages personifies law as despot, in its most coercive sense.

[506] Asheri 2007: 105 on dreams in Herodotus as literary constructions which serve as a means of warning and foretelling the future. Pelling 1996: 73 'the first response, involving the marriage to the outsider is a necessary premise for the second, clearer dream to be taken as threatening'. Hollman 2011: 82-3 with n.73; 86 on dream interpreters as eager to please and with instinct for self preservation. Asheri 2007: 157 who argues the two dreams convey the same message, predicting the end of the Median empire.
[507] Glazebrook and Olsen 2014: 70.
[508] Pelling 1996: 76.
[509] Bakker 2007: 55.

However, in the dialogue between Harpagus and his wife, it is noticable that he adopts a strategic response to the king's demands in that he does not conform to the king's expectations. He intends to disobey Astyages by not killing the baby himself, partly because the baby is kin, partly because he fears reprisals from Mandale. He calculates that, if she becomes tyrant and he has killed her son, he will be in danger (ἄλλο τι ἢ λείπεται τὸ ἐνθεῦτεν ἐμοὶ κινδύνων ὁ μέγιστος, 1.109.4). He lies to Astyages; we learn his true motivation in this dialogue with his wife:

> The child was then given to him, consigned to its death, and he went to his house weeping. When he came in, he told his wife the entire speech uttered by Astyages. 'Now, then,' she said to him, 'what do you propose to do?' 'Not to obey Astyages' instructions,' he answered, 'not even if he should lose his mind and be more crazy than he is now: I will not lend myself to his plan or be an accessory to such a murder. There are many reasons why I will not kill him: because the child is related to me, and because Astyages is old and has no male children. Now if the sovereignty passes to this daughter of his after his death, whose son he is now killing by means of me, what is left for me but the gravest of all dangers? For the sake of my safety this child has to die; but one of Astyages' own people has to be the murderer and not one of mine.'
>
> ὁ Ἅρπαγος, ὡς οἱ παρεδόθη τὸ παιδίον κεκοσμημένον τὴν ἐπὶ θανάτῳ ἤιε κλαίων ἐς τὰ οἰκία: παρελθὼν δὲ ἔφραζε τῇ ἑωυτοῦ γυναικὶ τὸν πάντα Ἀστυάγεος ῥηθέντα λόγον. ἣ δὲ πρὸς αὐτὸν λέγει 'νῦν ὦν τί σοὶ ἐν νόῳ ἐστὶ ποιέειν;' ὁ δὲ ἀμείβεται 'οὐ τῇ ἐνετέλλετο Ἀστυάγης, οὐδ᾽ εἰ παραφρονήσει τε καὶ μανέεται κάκιον ἢ νῦν μαίνεται, οὔ οἱ ἔγωγε προσθήσομαι τῇ γνώμῃ οὐδὲ ἐς φόνον τοιοῦτον ὑπηρετήσω. πολλῶν δὲ εἵνεκα οὐ φονεύσω μιν, καὶ ὅτι αὐτῷ μοι συγγενής ἐστὶ ὁ παῖς, καὶ ὅτι

> Ἀστυάγης μὲν ἐστὶ γέρων καὶ ἄπαις ἔρσενος γόνου: εἰ δ᾽ ἐθελήσει τούτου τελευτήσαντος ἐς τὴν θυγατέρα ταύτην ἀναβῆναι ἡ τυραννίς, τῆς νῦν τὸν υἱὸν κτείνει δι᾽ ἐμεῦ, ἄλλο τι ἢ λείπεται τὸ ἐνθεῦτεν ἐμοὶ κινδύνων ὁ μέγιστος; ἀλλὰ τοῦ μὲν ἀσφαλέος εἵνεκα ἐμοὶ δεῖ τοῦτον τελευτᾶν τὸν παῖδα, δεῖ μέντοι τῶν τινα Ἀστυάγεος αὐτοῦ φονέα.’ (1.109.1-4)

Harpagus calculates that Astyages’ lack of a male heir is a weakness, together with his age, and so, for him, safety lies in thinking about Mandale’s likely reaction. He, therefore, finds a way to evade Astyages’ coercive order, by passing on responsibility for the killing to a slave. Harpagus now uses coercive language to a social inferior, warning him that he will be tortured if he disobeys: ‘you will be put to death in the most excruciating manner’ (ὀλέθρῳ τῷ κακίστῳ σε διαχρήσεσθαι, 1.110). In this way, Harpagus is shown to think strategically and to contest the king’s authority, whilst also exercising his own power over a slave.

His wife, however, has no agency, in that when Harpagus tells his wife of his conversation with Astyages, she asks ‘What do you intend to do now?’ (Νῦν ὦν τί σοι ἐν νόῳ ἐστὶ ποιέειν, 1.109.2). She also expresses no feelings at the order to kill the child. She is the mere recipient of information, a cipher, as she will be when her husband tells her that their son has been invited to meet the young Cyrus (1.119.2).[510] We hear nothing of her reaction to his murder. This relationship, therefore, models one type of gender norm: the active, calculating male, the passive female.

[510] Gray 1995: 193.

This contrasts with Mitradates and Cyno, as revealed by the dialogue between them when Mitradates relates what he had found at court. To that extent, he functions like a messenger in a play. Herodotus shows his *aporia* in telling the story of how he came to bring the baby home from the Median court.[511] He is amazed (ἐκπλαγεὶς, 1.111.2) at the distress he finds in Harpagus' household, he wrongly assumes that the mother of the baby is a household slave (δοκέων τῶν τινος οἰκετέων εἶναι, 1.111.4), he is astonished (ἐθάμβεον, 1.111.4) at the gold and luxurious clothes, and only finds out (πυνθάνομαι, 1.111.5) the truth when told by his escort. The characterisation is that of a slave, subject to orders, kept in ignorance, reliant on others for information and accepting his powerlessness in the face of intimidation and threats, as shown by his response to his wife's plea not to expose the baby; 'but he said he could not do otherwise' (ὁ δὲ οὐκ ἔφη οἷός τε εἶναι ἄλλως αὐτὰ ποιέειν, 1.112.1).

Cyno, however, reacts differently from Harpagus' wife. She notices the baby's size and handsome appearance (τὸ παιδίον μέγα τε καὶ εὐειδὲς ἐόν, 1.112.1), not his apparel, and makes an effort to dissuade her husband from exposing him, in contrast to Harpagus' wife. In her emotional response and act of supplication (δακρύσασα καὶ λαβομένη τῶν γουνάτων τοῦ ἀνδρὸς, 1.112.1) at the prospect of the killing of a baby she reflects a commitment to family and children that contrasts with the priorities of Astyages and Harpagus. Even when she fails to persuade her husband not to expose the baby (οὐ δύναμαί σε πείθειν μὴ ἐκθεῖναι, 1.112.2) she has a plan which, she convinces Mitradates, will avoid detection by Harpagus' men. It will enable their still-born child to be buried and will enable her to rear a child; 'you won't be caught doing wrong to our masters, and we will have made a plan that's not at all bad' (οὔτε

[511] Pelling 2000: 89; De Bakker 2007: 22, 39; de Jong 2007: 6 on narrative techniques to highlight the importance of the event: narrative delay, use of the present tense and direct speech in which Mitradates is the focaliser.

σὺ ἀλώσεαι ἀδικέων τοὺς δεσπότας οὔτε ἡμῖν κακῶς βεβουλευμένα ἔσται, 1.112.3). She sets the agenda, and shows a decisiveness and independence of action that her husband lacks.[512] Moreover, her rational plan contrasts with Astyages' 'irrational non-reflective approach to reality'.[513] Her plan, moreover, is an example of *nomos* in its practical sense of an action that indicates normality, preserving a life, not destroying it.[514]

Cyno, who saves Cyrus as a baby from exposure and looks after him as a young boy, is 'other' in a number of respects, as slave (συνδούλη, 1.110.1), barbarian (a point emphasised by Herodotus in giving both the Greek and the Median version of her name, Κυνὼ and Σπακώ, 1.110.1) and female.[515] However, in contrast with her husband, she exploits her invisibility and acts to evade and subvert the coercive orders of Astyages and Harpagus.[516] For Gray, the key 'otherness' is the status of slave which she shares with her husband Mitradates: 'they are there to produce a dialectic on the nature of royal barbaric power through their difference'.[517] This, she argues, is emphasised by the contrast between the wild mountainous region in which they live (ὄρεα θηριωδέστατα, 1.110.1) and the flatlands where most Medes live (ἡ δὲ ἄλλη Μηδικὴ χώρη ἐστὶ πᾶσα ἄπεδος, 1.110.2), her desire to nurture rather than kill the baby Cyrus, and her barrenness which contrasts with Mandane's fecundity.

I argue, however, that the significance of location lies as much in its cultural difference as its geographical distance from the royal centre of power, Ecbatana. In the figure of Cyno we see an individual who has not assimilated the *nomos* of tyranny completely, who has retained a

[512] Boedeker 2011: 213.
[513] Van de Veen 1996: 38-39.
[514] Blok 2002: 227; Lateiner 1989: 135, 140.
[515] Van de Veen 1996: 46, 51.
[516] Dewald 1998: xi; Van de Veen 1996: 52.
[517] Gray 1995: 206.

degree of independence which she, but not Mitradates, displays through speech as well as action. Herodotus draws a clear distinction between her and her husband whilst acknowledging that their relationship is based on mutual concern (ἦσαν δὲ ἐν φροντίδι ἀμφότεροι ἀλλήλων πέρι, 1.111.1). This reciprocity is not mirrored by any of the other relationships in this story; as with Masistes and his wife, Cyno and Mitradates model a marital norm which exposes the abnormality of other relationships in this story.

Van de Veen cites this story in support of his hypothesis that during the course of Herodotus' *Histories* 'settlements which used to be great have lost their significance, those which are great used to be small' (τὰ γὰρ τὸ πάλαι μεγάλα ἦν, τὰ πολλὰ αὐτῶν σμικρὰ γέγονε,τὰ δὲ ἐπ'ἐμεῦ ἦν μεγάλα, πρότερον ἦν σμικρά, 1.5.4) showing that human prosperity never stays in the same place.[518] Cyno saves Cyrus, the founder of the Persian empire, though she has no social or political status and Astyages is ultimately defeated by the man he tries to have killed, despite his network of servants and informers. This type of dialectic, however, as with Gray's analysis, fails to give due attention to the ambiguities in each individual's speech, actions and emotions as portrayed by Herodotus. This is evident when we consider the ways in which Cyno and Mitradates differ from, as well as complement, each other. Cyno becomes a significant actor in the story because, unlike her husband, she transcends her powerlessness as a slave. However, she is less successful as a speaker. Her prediction that Mitradates will not be found out is wrong and her confidence in her plan is misplaced. When summoned to court as a child, for assaulting the child of an important Mede, as part of a game of kingship, Cyrus shows the deference of a subject or slave, in addressing the king as master (ὦ δέσποτα, ἐγὼ ταῦτα τοῦτον ἐποίησα σὺν δίκῃ, 1.115.2) which is appropriate for someone in his vulnerable

[518] Van de Veen 1996: 42-52.

position.[519] However, his actions (violent, dictatorial 1.114-115), his resemblance to the king (ὅ τε χαρακτὴρ τοῦ προσώπου προσφέρεσθαι ἐδόκεε ἐς ἑωυτὸν, 1.116.1), and his speech, 'he spoke like a free man' (ἡ ὑπόκρισις ἐλευθεριωτέρη, 1.116.1) prevail over his upbringing as the child of slaves and reveal him to Astyages as his grandson.[520]

Does *phusis* therefore, his innate kingship, take precedence over *nomos,* his upbringing in a slave family? The portrayal of Cyrus is ambivalent.[521] Though he 'plays the game of being king'[522] as a boy, he is, of course, the product of a mixed marriage (ἐκ γὰρ δυῶν οὐκ ὁμοεθνέων ἐγεγόνεε, 1.91.5) and so his social position is insecure. He is both inside the existing power structure with a Median mother but outside it with a Persian father and a slave carer. Moreover his 'free speech' could be a tribute to Cyno, and his open response to Astyages' questions marks his distance, not his closeness, to the *nomos* of tyranny. There is also a significant difference between Cyrus and his biological parents. He does not disown Cyno but continues to praise her (τραφῆναι δὲ ἔλεγε ὑπὸ τῆς τοῦ βουκόλου γυναικός, ἥιέ τε ταύτην αἰνέων διὰ παντός, 1.122.3) as the person who brought him up. As Chiasson says, it is fundamental to the narrative that Cyrus is human and accepts his humanity; this will change, in his encounter with Tomyris.[523]

In terms of character, therefore, Herodotus draws a contrast between Cyrus and Astyages, thus challenging the concept of the 'barbarian royal' and introducing some nuance to

[519] Dickey 1996: 97.
[520] Asheri 2007: 161; Chiasson 2012: 222 on this recognition scene.
[521] Pelling 1996: 16n.39.
[522] Asheri 2007: 160 on staging this game using elements of Medo-Persian court as model.
[523] Chiasson 2012: 219.

Herodotus' portrayal of tyranny.[524] As a young man, Cyrus is described as the most manly and popular of his contemporaries (ἀνδρηιοτάτος καὶ προσφιλεστάτος, 1.123.1), whereas Astyages is responsible for losing his empire through his harsh, cruel behaviour (διὰ τὴν τούτου πικρότητα, 1.130.1) both towards Harpagus, who has a personal motive for taking revenge, and towards the Median people (ἐόντος τοῦ Ἀστυάγεος πικροῦ ἐς τοὺς Μήδους, 1.123.2).[525] He is described by Herodotus as 'sent mad by the gods (θεοβλαβὴς, 1.127.2) and therefore liable to make irrational decisions; he makes Harpagus his commander in the campaign against the Persians, forgetting his likely desire for revenge.[526] Thomas notes the interest for Greeks in using the Medes and Persians to think about the connection between a king and divine order and justice.[527] If the king is sent mad by the gods, that connection is broken. This contrasts with the story of Deioces, in which there is no divine element, but order is maintained and rules established, albeit at the price of submitting to a tyrant.

It is also significant that, despite Astyages' omnipotence, ultimately he is not in control.[528] His orders are disobeyed, his advisors give the wrong advice (to return Cyrus to his parents, for example) and within his family his actions earn him the resentment of his daughter (θυγατρὶ τῇ ἐμῇ διαβεβλημένος, 1.118.2) and the desire for revenge from Harpagus. It is ironic that, although both Astyages and Harpagus are motivated by power and safety, the outcome of their actions is that Astyages becomes subject to Cyrus' power, and Harpagus loses his son through seeking to avoid the accusation of being Cyrus' murderer.[529] Apart from Cyno, the two women in the story, Mandale and Harpagus' wife, do and say very little, but

[524] Flory 1987: 123-127 whose model of the 'barbarian royal' does not allow for change or development.
[525] Chiasson 2012: 223-4.
[526] There is perhaps an echo of Aeschylus' description of Xerxes in *Persians* (831) as *θεοβλαβὴς*.
[527] Thomas 2012: 251-2.
[528] Munson 2005: 62.
[529] Van de Veen 2002: 29.

the outcome of their passivity is very different. When Mandale's son is returned to her and her husband, we note their joy at his unexpected arrival (μεγάλως ἀσπάζοντο, 1.122.1) and reflect on their happiness at a re-united *oikos*. Harpagus and his wife, however, are both the victims of his failure to act, when their only child is murdered by Astyages.

Dewald makes a general observation that women in Herodotus have a more creative response to circumstances than men.[530] This is certainly true of Cyno compared with Mitradates. In the case of Mandale and Harpagus' wife, however, they are passive in responding to circumstances that men create but with very different outcomes. In the case of Cyno, her actions contributed to the defeat of the Medes and the beginning of the Persian empire; 'the Persians, who were the slaves, are now the masters of the Medes' (Πέρσας δὲ δούλους ἐόντας τὸ πρὶν Μήδων νῦν γεγονέναι δεσπότας, 1.129.4). She achieves not only significant change for herself but also for the wider historical narrative.

I have analysed the story of Cyrus' early life as a case study in life under a tyrant who does not follow the rules of the *oikos*. The story reveals various reactions to an order backed up by threats, including resistance from Harpagus, passivity from his wife, fear from the slave Mitradates and a creative and unexpected response from his wife. Cyrus himself shows that he can perform appropriately as a king even as a child, which contrasts with his later life, when he fails to do so in his encounter with Tomyris. These reactions are signalled through speech; the dialogue between Harpagus and his wife reveals his calculated refusal to obey Astyages' order, and her response (what are you going to do about it?) her lack of agency, which she shares with Mandale. Meanwhile the dialogues between Astyages and Harpagus, and

[530] Dewald 2013b: 169.

Harpagus and Mitradates both expose the coercive threats of the tyrant, whereas Cyno's response to her husband shows her to be a persuasive speaker as well as someone who is a significant actor. Sometimes the rule of law is recognisable by its absence. In this story, we see Astyages characterised by lack of restraint, who issues arbitrary punishments and fails to recognise his obligation to protect, not destroy his *oikos.* This quality of excess and arbitrariness is not, however, found in Darius, another Persian king who passes judgment and exercises the power of life and death, as I examine in my next case study.

3.4 Darius and Intaphrenes' wife: the intersection of motherhood and tyranny

I now consider this story in which a Persian king voices the priorities he would expect of a wife and mother, and which, therefore, are part of the ideological construct of marriage and motherhood, the unwritten *nomoi* which dictate the social and cultural expectations of these roles, and which become contested once Intaphrenes' wife has to choose between the competing claims of husband, sons and brother. I analyse how this contested familial role intersects with her change in status, following the adoption of the political *nomos* of tyranny in Persia, and Darius' accession to the kingship. Like her husband, she is now subject to Darius' authority, but unlike him she manages, through her performance in lament and in speech, to negotiate and survive the transition to the position of subject, and to preserve her role as mother and sister. She does this by taking a strategic approach to her dealings with Darius, rather than seeking, like Intaphrenes, to evade or appropriate law's power, now in the hands of the king. I compare her story with that of Sophocles' *Antigone*, arguing that there is a fundamental difference between the two stories, based on the different approaches of the protagonists. Intaphrenes' wife enters into dialogue with Darius, who adopts an inquisitorial

role. Antigone and Creon, by contrast, are adversaries, whose exchanges are characterised by antagonism, conflict and opposition.

As with the story of Asyages, Cyrus and Cyno, this story is likely to be Herodotus' reworking of an existing oral tradition.[531] Herodotus' audience, therefore, would probably be familiar with the general outlines of the story and would be interested in how he reworks his material and in what context. By framing this story with the death of Intaphrenes, Herodotus alerts his external audience to one outcome. However, he introduces an element of surprise in the story of Intaphrenes' wife, using the unusual or remarkable to provoke inquiry and debate, both internally, between Darius and Intaphrenes' wife, and externally amongst Herodotus' readers. The story of Intaphrenes' wife poses the question: what sort of mother chooses to save a brother rather than a husband or son?

Contextually, the story is told in the *Histories* at a liminal moment when Darius is consolidating his power, following the revolt of the conspirators, including Darius and Intaphrenes, against the Magi, and the Constitutional Debate between the seven conspirators, which led to Darius' accession to the kingship and 'everything was filled with his power' (δυνάμιός τε πάντα οἱ ἐπιμπλέατο, 3.88.3), testing the relationship between the seven in a new hierarchy. Intaphrenes is shown to breach the new rules by mutilating two of the king's

[531] How and Wells 1928 noting parallels with the Indian Epic, the Ramayana, and a late Persian story; Beekes 1986: 233 argues that a Persian story precedes Herodotus, with India being its ultimate source. He does not analyse the story in functional terms: it is anecdotal, an extreme situation which hardly ever occurs; West 2003a: 436-7 says the story may have arisen because of confusion in the oral tradition between Intaphrenes and Artaphrenes, Darius' brother, who was a more obvious threat to Darius' rule, and is a portrayal of Eastern tyranny as viewed by subjects or outsiders, not as a historical reconstruction of an event from Persian history; Neuburg 1990: 57-8 on folktale motif in this story 'not meant to be natural but memorable'; Lateiner 1989: 136 on this story as 'a popular legend'. However, Asheri 2007: 506 notes that capital punishment of an entire family is documented in all ancient societies and this story may show traces of 'avuncular' system.

guards, cutting off their noses and ears, following a dispute over access to the king and is arrested, with all other male members of his family, following an action which Darius construes as treachery.

Firstly, I consider the *nomos* which is engaged in Darius' dealings with Intaphrenes:

> And indeed the rule stated that the conspirators could come in to see the king unannounced, unless he happened to be having sex with a woman
>
> καὶ γὰρ δὴ καὶ ὁ νόμος οὕτω εἶχε, τοῖσι ἐπαναστᾶσι τῷ Μάγῳ ἔσοδον εἶναι παρὰ βασιλέα ἄνευ ἀγγέλου, ἢν μὴ γυναικὶ τυγχάνῃ μισγόμενος βασιλεύς (3.118.1)

This *nomos* applies to the six rebels against the Magi who had agreed to Darius becoming king, and there appears, therefore, to be both a duty-imposing and a power-conferring element. Darius' fellow conspirators can enter unannounced as long as he is not having sex with a woman. This is an interesting example of a political *nomos* in transition. Darius has only just become king and is in the process of consolidating his authority. Intaphrenes 'thought it his right not to be announced' (οὔκων δὴ Ἰνταφρένης ἐδικαίου οὐδένα οἱ ἐσαγγεῖλαι, 3.118.2) but this clashes with the duty imposed on those charged with preventing access when the king was having sex. In the event, Intaphrenes takes the law into his own hands and thereby breaches his new obligation to the king by assaulting the two men. His mode of punishment, mutilation, moreover, recalls the customary penalty for rebels. Intaphrenes arrogates to himself a power which now belongs to the king.[532] The king asserts his authority by having Intaphrenes and his male family members arrested. He interrogates all six of the co-conspirators (ἀπεπειρᾶτο γνώμης, 3.119.1) and then imprisons Intaphrenes and

[532] Sancisi-Weerdenburg 2013: 145 and n.7 with reference to Behistun inscription.

his family to await death. In assuming the power of life and death, he shows the coercive power of the tyrant. The story shows that Intaphrenes has not negotiated successfully the transition from being a co-conspirator with Darius to being the king's subject; he acts as though the Constitutional Debate has not concluded and his status has not changed.

For a Greek audience, much about this story conforms to Persian 'otherness'; a polygamous king who exercises sole power of life and death, an autocrat who equates his will or fancy with the law.[533] I argue, however, that Herodotus uses this story to show how the political *nomos* of tyranny develops and to distinguish Darius from other Persian kings. Firstly, in allowing conditional access to the six co-conspirators, Darius is more open than his predecessors and successors, and indeed than he will be with Intaphrenes' wife. Secondly, he does conduct a form of trial, in that he questions each of the six co-conspirators individually (ἕνα ἕκαστον ἀπεπειρᾶτο γνώμης, 3.119.1) and only makes a judgment once he is satisfied that five of the six are not sympathetic to Intaphrenes. To that extent, his judgment is authoritarian but not arbitrary. Intaphrenes, however, acts like a barbarian, in using the Persian sword, the *akinakes,* and mutilation as his means of assault, and his thought processes are shown to be faulty: he ignores the conditional nature of his rights of access to the king and he wrongly accuses the guards of lying to him. This section of the story, therefore, shows that enforcement powers now lie with the king, the rules have changed, and through his dealings with Intaphrenes he consolidates his power. Intaphrenes, however, has not adjusted to the new reality of living with the rules of tyranny.

[533] Lateiner 1989: 172-5 on characteristics of autocrats in Herodotus; West 2003a: 434 notes that Darius does not consult the royal judges (οἱ δὲ βασιλήιοι δικασταὶ, 3.31.3) who decide law suits and interpret law; he assumes autocratic power.

In the exchange between Darius and Intaphrenes' wife, however, Darius encounters a different approach to *nomos*. Unlike Intaphrenes, who failed to recognise the coercive nature of the new law and whose resistance was futile, his wife approaches the law strategically, and that is the reason, I argue, for his death and her survival. She acts both as a participant engaging with law and as a resister, experiencing herself as up against the (new) legal order.[534]

> Intaphrenes' wife took to coming to the doors of the palace weeping and wailing. This behaviour of hers eventually moved Darius to pity, and he sent a messenger out to her. 'Woman', he said, 'King Darius permits you to choose one member of your imprisoned family to save'.
>
> ἡ δὲ γυνὴ τοῦ Ἰνταφρένεος φοιτῶσα ἐπὶ τὰς θύρας τοῦ βασιλέος κλαίεσκε ἂν καὶ ὀδυρέσκετο: ποιεῦσα δὲ αἰεὶ τὠυτὸ τοῦτο τὸν Δαρεῖον ἔπεισε οἰκτεῖραί μιν. πέμψας δὲ ἄγγελον ἔλεγε τάδε: 'ὦ γύναι, βασιλεύς τοι Δαρεῖος διδοῖ ἕνα τῶν δεδεμένων οἰκηίων ῥύσασθαι τὸν βούλεαι ἐκ πάντων.' (3.119.3-4)

Are we to read this as a performance of her grief and distress? It could reflect, for a Greek audience, her 'otherness' as a Persian, reflecting a display of emotion which characterised the Persians, both male and female, in Aeschylus' *Persians*.[535] However, as Golden points out, 'grief should not be confused with ritual mourning'.[536] The motif of weeping and wailing at the threat of death is also found in the story of Cyrus' early life, when Astyages orders his servant Harpagus, to kill Cyrus as a baby. The whole of Astyages' household laments (οἶκος μὲν πᾶς Ἁρπάγου κλαυθμῷ κατείχετο, 1.111.2) and Harpagus carries the baby home weeping (ἦιε κλαίων ἐς τὰ οἰκία, 1.109.1) after Astyages has ordered him to kill the child. As I have

[534] Sibley and Ewick 2000: 50.
[535] A. *Persians*: 113-9; 537-545; 909-930.
[536] Golden 2011: 273-4.

shown, however, he is motivated by self-interest rather than concern for the child. I suggest, therefore, that it is not possible to know what Intaphrenes' wife felt for her husband or her children, from her laments.[537] It is the king's emotions and perceptions which are focalised, not hers. He fears (ἀρρωδήσας, 3.119.1) treachery, the very persistence of her actions persuade him to pity her (ποιεῦσα δὲ αἰεὶ τὠυτὸ τοῦτο ... ἔπεισε οἰκτῖραί μιν, 3.119.3), her speech amazes him (θωμάσας τὸν λόγον, 3.119.5), he is pleased with her (ἡσθεὶς αὐτῇ, 3.119.7) and approves her words (εὖ τε δὴ ἔδοξε ... εἰπεῖν ἡ γυνὴ, 3.119.7).

However, we can analyse her performance of lament in terms of effect and outcome. Her initial performance is successful; it leads Darius to pity her and offer her the option to save one family member. Like her husband, she has to adjust to a new relationship with a man who now has greater authority over her and who has the power as tyrant to give orders backed up by threats. However, she uses a form of persuasion, the lament, which is appropriate both for a woman and for someone who is now a suppliant before the law.[538] Her position outside the gates symbolises this new relationship to the king, in contrast with the direct access assumed by her husband.[539]

She is also cleverer than other characters in the *Histories* who seek to evoke the king's pity.[540] Oeobazus, for example, asks to leave one of his three sons behind when the Persians were about to invade Scythia. Darius appeared to be friendly (ὡς φίλῳ ἐόντι, 4.84.1) offering to leave all three behind. However, the focalisation of Oeobazus' feelings and expectations,

[537] There is an interesting parallel with another wife and mother, Penelope, whose feelings are also not focalised (de Jong 2001: 36 'her inner thoughts remain a secret; the narratees have nothing to go on but her words and deeds').
[538] Brosius 1996: 117. McClure 1999: 36.
[539] Brosius 1996: 109-110.
[540] Neuberg 1990: 58.

overjoyed that his sons, he supposed, would be released from military service (περιχαρὴς ἦν, ἐλπίζων τοὺς υἱέας στρατηίης ἀπολελύσθαι, 4.84.2) foreshadow disaster; all three are left behind, but dead.[541] Pythius makes a similar request to Xerxes, hoping he will take pity on an old man (ἐμὲ ἐς τόδε ἡλικίης ἥκοντα οἰκτίρας, 7.38.3) but the king responds by saying his eldest son, the one he wants to save, will pay with his life (τῇ ψυχῇ ζημιώσεαι, 7.39.2). He is cut in half and displayed for the whole army to see. Both Oeobazus and Pythius thought their personal relationship with the king meant he would relax the reciprocity which imposed obligations on Pythius and Oeobazus to make sons available to the king and were proved wrong.[542] Intaphrenes' wife is outside these male ties of reciprocity, between subject and king, but successfully negotiates the family ties of reciprocity, which Darius' offer of a life forces her to do. She uses the gender-appropriate lament both to signal to the king that she recognises his authority, and to gain a concession from him.

> She thought about the king's offer and replied, 'If, thanks to the king, I have to choose the life of one person, out of them all I choose my brother.'
>
> ἡ δὲ βουλευσαμένη ὑπεκρίνετο τάδε: 'εἰ μὲν δή μοι διδοῖ βασιλεὺς ἑνὸς τὴν ψυχήν, αἱρέομαι ἐκ πάντων τὸν ἀδελφεόν.' (3.119.4)

Her speech act is more surprising than her performance as a mourner; she chooses to save a brother, after deliberating with herself (βουλευσαμένη, 3.119.4). This is the only clue in the story as to her thought processes and it is crucial. She thinks before she speaks, she has a strategy, and is driven by reason rather than emotion. In this way she distinguishes herself from her husband, who acts impetuously, is suspected of plotting (ἐπιβουλεύειν, 3.119.2), and

[541] See also the example of Cleobis and Biton's mother in chapter 1, with references.
[542] Baragwanath 2008: 269-278 on the Pythius episode.

suffers the consequences. The gender stereotype of the rational male and the emotional female is thereby subtly undermined, in Herodotus' telling of this story.

Darius is amazed by Intaphrenes' wife's speech, in that she does not prioritise husband or children. His reaction is a significant indication that he judges her speech unusual, and is a cue for Herodotus' audience that her speech requires interpretation.[543]

> 'Woman, the king would like to know what your reason is for abandoning your husband and children and deciding to save your brother's life, when he is not as close to you as your children, or as attached to you as your husband'.
>
> 'ὦ γύναι, εἰρωτᾷ σε βασιλεύς, τίνα ἔχουσα γνώμην, τὸν ἄνδρα τε καὶ τὰ τέκνα ἐγκαταλιποῦσα, τὸν ἀδελφεὸν εἵλευ περιεῖναί τοι, ὃς καὶ ἀλλοτριώτερός τοι τῶν παίδων καὶ ἧσσον κεχαρισμένος τοῦ ἀνδρός ἐστι.' (3.119.5)

His use of words reveals that he is assessing her performance of her obligations to her husband and children. She is abandoning them (ἐγκαταλιποῦσα, 3.119.5), a word used by Phaedrus in Plato's *Symposium* to express how unthinkable it would be to leave a lover on the battlefield,[544] and which therefore has a pejorative meaning in that text and, I argue, reflects Darius' judgment in this text.

Some translations of this passage suggest that Darius is criticising her for how she feels about her husband and children.[545] However, I suggest that, in saying that her brother should be ἧσσον κεχαρισμένος than her husband, Darius is highlighting the notion of reciprocity in

[543] Another example of female speech astonishing a man: Gyges, at Candaules' wife's ultimatum (τέως μὲν ἀπεθώμαζε τὰ λεγόμενα, 1.11.3). Herodotus finds Artemisia remarkable (7.99).
[544] *Pl*. Smp. 179a.
[545] ἀλλοτριώτερός – Waterfield, De Sélincourt: 'not as near'; Holland: 'not as close'.
ἧσσον κεχαρισμένος – Waterfield, De Sélincourt: 'not as dear'; Holland, 'not as beloved'.

relations between husband and wife.[546] Finglass notes that 'χάρις is a key word in the vocabulary of reciprocity',[547] and forms of χαρίζομαι are used frequently by Herodotus to denote reciprocal obligation, the granting of favours in return for deeds done.[548] Intaphrenes' wife, therefore, is bound by ties of reciprocity to her husband and the question is how she is to negotiate these ties, in the circumstances of Intaphrenes' arrest.

As for her children, Darius voices the expectation that she should prioritise her relationship to them, over her brother. Darius is asking Intaphrenes' wife, therefore, to answer his expectations of her, as wife and mother. It is the king, not Intaphrenes' wife, who is voicing a normative construction of motherhood, a family *nomos* with which a Greek audience would be entirely comfortable, a *nomos* based on a construction of *oikos* by which a wife transfers her primary allegiance from her natal *oikos* to her husband's *oikos* and fulfils her obligation to the *oikos* by providing a son.

She responds as follows:

> 'My lord', she replied, 'God willing, I may get another husband and more children, if I lose the ones I have at the moment. But my parents are dead, so there's no way I can get another brother. That was why I said what I said'.
>
> ἡ δ' ἀμείβετο τοῖσιδε. 'ὦ βασιλεῦ, ἀνὴρ μέν μοι ἂν ἄλλος γένοιτο, εἰ δαίμων ἐθέλοι, καὶ τέκνα ἄλλα, εἰ ταῦτα ἀποβάλοιμι: πατρὸς δὲ καὶ μητρὸς οὐκέτι μευ ζωόντων

[546] van Wees 1998b: 13-49. He defines reciprocity as 'exchange conceptualised as the performance and requital of gratuitous actions'.
[547] Finglass 2011: 289 in commenting on χάρις χάριν γάρ ἐστιν ἡ τίκτουσ᾽ ἀεί, ('For it is always one kindness that begets another', Finglass' translation) in Sophocles' *Ajax*, 522.
[548] For example, Croesus to Apollo, 1.87; Darius to Coës, 4.98; Adrastus to Croesus, 1.42. Other examples 1.33; 1.51.4; 3.39.4; 6.87; 1.90.2; 7.8δ1; 9.78.3; 8.5.

> ἀδελφεὸς ἂν ἄλλος οὐδενὶ τρόπῳ γένοιτο. ταύτῃ τῇ γνώμῃ χρεωμένη ἔλεξα ταῦτα (3.119.6)

This passage has been the subject of much scholarly debate, in part because it is likely that Sophocles borrowed this argument in *Antigone*.[549] However I argue that the differences both in the circumstances of the two women, and the way they communicate with the men who have power over them outweigh the significance of the verbal echoes between the two passages, though there is one respect in which both women act in accordance with religious *nomos*. Whilst the significance of this is much greater in the *Antigone* story, Intaphrenes' wife forestalls any accusation of impiety, and is thereby shown to speak appropriately, by acknowledging the role of the god (εἰ δαίμων ἐθέλοι). Through her speech act, she successfully preserves the lives of two family members:

> The woman seemed to Darius to speak well and, being pleased with her, he released not only her brother, as she had requested, but also her oldest son. However he had all the others executed.
>
> εὖ τε δὴ ἔδοξε τῷ Δαρείῳ εἰπεῖν ἡ γυνή, καί οἱ ἀπῆκε τοῦτόν τε τὸν παραιτέετο καὶ τῶν παίδων τὸν πρεσβύτατον, ἡσθεὶς αὐτῇ, τοὺς δὲ ἄλλους ἀπέκτεινε πάντας (3.119.7)

Darius, therefore, judges her speech act; he thought she spoke well. The outcome of this story is that Intaphrenes' wife emerges with her *oikos* diminished but intact, preserving both natal and marital ties. In this she is more successful than other supplicants before a king.

[549] Griffith 1999: 277.

Why does she not choose her husband? She knows that would be folly, since, as Dewald and Kitzinger observe, she is 'no Antigone but rather a survivor, in her political astuteness'.[550] Dewald cites this story as an exception to the general rule in Herodotus, that wives are loyal to their husbands. In the case of Intaphrenes' wife her husband 'will not or cannot behave like a husband'.[551] He has broken the ties of reciprocity and can no longer perform the roles of husband and father. His wife, therefore, is no longer bound by them either, and remarriage appears a good strategic choice in her circumstances. Dewald and Kitzinger term the story a metanarrative 'a *logos* about the power of *logos*, reflecting on some of the complexities of speech as an act of communication'. The point of the story is 'Darius' recognition of the woman's cleverness in expressing her tacit loyalty, by choosing to save a member of her natal family rather than her politically compromised husband'.[552] Her power, they argue, lies in her ability to manipulate *logos* to persuade, but it wins her an ambiguous victory and, as with other courtiers, it corrupts the ability of the king to govern effectively.[553] I agree with this reading insofar as it recognises Intaphrenes' wife's cleverness in not choosing her husband. However, the relationship between her as mother and the king is more complex than one of effective governance, which, I argue, the king has already proved, in relation to Intaphrenes. I consider now the maternal role that Darius assumes should take priority and the question as to why she does not choose a son.

This story is a notable exception to the motif in Herodotus of mothers, both Greek and non-Greek, who keep sons alive against the odds, in the stories of Cyno, and Labda (5.92), for example, so tests Boedeker's conclusion that the relationship between Persian mothers and

[550] Dewald and Kitzinger 2006: 128n.5.
[551] Dewald 2013b: 165n.19.
[552] Waterfield 1998: 640; See also Dewald and Kitzinger 2006: 122-129.
[553] Dewald and Kitzinger 2006: 124-127.

sons is always supportive.[554] The reason for her not choosing to save a son is much more complex than the reasons she does not choose to save her husband, and is one Herodotus does not answer. Perhaps she thinks that choosing a son might link her to the conspiracy, indicating that she sees him taking over from his father in due course.[555] That is a possibility which I explore later on in this chapter. At this stage, I merely note that Intaphrenes' wife has decided not to choose a son; it is part of her calculations.

Some scholars have focussed on this response because of its syntactical and lexical echoes with the passage in Sophocles' *Antigone* in which the protagonist voices the *nomos* which compels her to bury her brother Polyneices.[556] Murnaghan, whose focus is on the *Antigone* story, suggests the argument better reflects the circumstances of Intaphrenes' wife than those of Antigone, pointing to the way in which marriage, unlike ties of kinship, is not created irrevocably by nature but instituted by society. Antigone stresses the institutional aspect of marriage which she devalues in relation to her blood ties to a brother, who is now irreplaceable, and the supernatural laws of the gods.[557] This, Murnaghan argues, is consistent with the conflict between the interests of men and women in the classical *polis*. She links this to Intaphrenes' wife's greater allegiance to the family into which she was born and to which she is tied by blood kinship than to the family into which she married and which, by marrying into, she helped to create.[558] However, by suggesting a parallel with Greek women, she ignores firstly the Persian element of this story, with its polygamous king and distinctively

[554] Boedeker 2011: 225-6.
[555] Mossman 1995: 188-9 notes that Pausanias (9.88) refuses to punish the children of Attaginus because they are innocent but, as the Panionius story shows, killing the children of one's enemy is not unGreek and prevents them growing up to avenge their father.
[556] Griffith 1999: 279.
[557] Murnaghan 1986: 198-200.
[558] Murnaghan 1986: 201-202.

Persian aspect to Intaphrenes' assault,[559] and, more importantly, she fails to acknowledge that Intaphrenes' wife, in contrast to Antigone, has now forged blood ties with sons.

Hardy's focus is on Intaphrenes' wife, rather than Antigone, and she concentrates on the function rather than the origin of story. She reads the dilemma of Intaphrenes' wife as part of her husband's story, analysing it in terms of boundary-crossing, a violation of the *nomos* of separate spheres, the public and the private. Intaphrenes crosses a boundary when he tries to enter the king's private space, his wife conversely enters a public space when she fails to 'make her decision based on criteria that are both private (pertaining to the household) and personal (pertaining to the emotions)'.[560] She sees not a man she has lived with nor children she has borne and raised but rather the 'offices' of husband and children, which admit of being filled by other individuals'.[561] Her choice to save her brother certainly has the logic of irreplaceability but we are not told that it is based on any filial affection or, as Zellner argues, the wish for companionship.[562] I have already suggested that Herodotus does not explore Intaphrenes' wife's emotions and that, in any event, Darius questions her priorities, not her feelings. The public/private dichotomy also appears rather schematic for a story which is unquestionably about family priorities. There is a political dimension to this story, with respect to Intaphrenes, but his wife makes her decision on matters which pertain to the household, so acts appropriately in accordance with gender norms.

[559] Brosius 1996: 36-7.
[560] Hardy 1996:103-107.
[561] For a man in the *Histories* who sees the office not the person, see Psammetichus' soldier (2.30.4) whose wife and children would be wherever his genitals were.
[562] Zellner 1997: 315-17.

Honig presents the exchange between Intaphrenes' wife and Darius as an *agōn,* rather than a negotiation.[563] For this scholar, the story is 'about a woman who laments too much and the sovereign's determination to put an end to it'.[564] In this reading, her resort to *logos* is an act of surrender; she loses the incalculable power of lamentation when she is forced, by Darius' cross-examination, to reason her choice. This argument, however, does not reflect the role of lamentation in the *Histories*. It is not shown by Herodotus to be a particularly powerful weapon. The laments in Harpagus' household do not cause Astyages to pity his daughter and repeal the death sentence on the child Cyrus, and the Persians, male and female, begging for water only achieve their end with a substantial financial inducement (3.117.5). In the case of Intaphrenes' wife, it makes Darius pity her but this is the start not the end of the negotiation. Honig's model of an *agōn*, moreover, with its implication of a contest with winners and losers, is less appropriate for the Herodotean story than it is for *Antigone*. To apply a legal analogy, Darius' role is more inquisitorial than adversarial and Intaphrenes' wife responds accordingly; she answers questions rather than engage in argument. Christ notes that Darius is a curious king, whose sense of wonder leads to enquiry; he subjects Intaphrenes' wife to a trial of loyalty.[565] It is, however, not an adversarial trial; this is a key difference between her and Antigone, and between Darius and Creon, as I will now illustrate.

3.5 Comparison with *Antigone*

The exchanges between Creon and Antigone in Sophocles' play, by contrast, are adversarial. They do not agree on what constitutes *nomos*. For Creon, his edict forbidding the burial of

[563] Honig 2013: 259 n.42.
[564] Honig 2013: 134.
[565] Christ 2013: 215.

Polyneices is a *nomos* which must be obeyed. Antigone, however does not recognise his edict as a *nomos*; she calls upon the unwritten laws of the gods.

Creon

And still you had the gall to break this law?

καὶ δῆτ᾽ ἐτόλμας τούσδ᾽ ὑπερβαίνειν νόμους;

Antigone

Of course I did. It wasn't Zeus, not in the least,
who made this proclamation - not to me.
Nor did that Justice, dwelling with the gods,
beneath the earth, ordain such laws for men.
Nor did I think your edict had such force
that you, a mere mortal, could override the gods,
the great unwritten, unshakeable traditions.[566]

οὐ γάρ τί μοι Ζεὺς ἦν ὁ κηρύξας τάδε,
οὐδ᾽ ἡ ξύνοικος τῶν κάτω θεῶν Δίκη
τοιούσδ᾽ ἐν ἀνθρώποισιν ὥρισεν νόμους
οὐδὲ σθένειν τοσοῦτον ᾠόμην τὰ σὰ
κηρύγματ᾽, ὥστ᾽ ἄγραπτα κἀσφαλῆ θεῶν
νόμιμα δύνασθαι θνητὸν ὄντ᾽ ὑπερδραμεῖν (449-457)

[566] Fagle 1982 translation used throughout this section. Griffith 1999: 201 states this is the earliest extant mention of 'unwritten laws', though he refers to universal codes of morality as against the letter of the law. Harris 2004 :19-56 integrates 'unwritten law' more closely with *nomos* which is the approach I take in this thesis.

Moreover, Creon frames this dispute in gender terms. This is one of many polarities which characterise the antagonistic relationship between Creon and Antigone.[567]

> I am not the man, not now: she is the man
> if this victory goes to her and she goes free
>
> ἦ νῦν ἐγὼ μὲν οὐκ ἀνήρ, αὕτη δ᾽ ἀνήρ,
> εἰ ταῦτ᾽ ἀνατὶ τῇδε κείσεται κράτη (484-5)

Harris argues that any written law must respect the underlying principles of legitimacy contained in the unwritten laws. Creon's order not to bury Polyneices, therefore, violates the laws of the gods regarding burial, that are recognised and enforced by the *polis*.[568] Antigone, therefore, he argues, has the stronger legal arguments in that she appeals to laws, whether human or divine, that have universal application.[569] This argument, therefore, complements my argument in this thesis that there are rules which apply to everyone and are of universal application.

However, the second law she invokes, in the passage which has echoes of the Herodotean story, does not have this universal applicability. The *nomos* invoked by Antigone at 908 and 914 concerns family obligations and competing roles within the family. In her *agōn* with

[567] Griffith 1999: 43-54 on polarities human/divine; *polis/oikos*; male/female; 209-212 on *nomos/phusis* and *philos/echthros* [567] in *Antigone*; Murnaghan 1986: 192-207 for conflict *polis* (human) institutions and blood kinship/law of gods; Neuberg, 1990: 54-76 for key oppositions friend/enemy.
[568] Harris 2004: 21, 29, 37.
[569] Harris 2004: 24.

Creon, once she has been sentenced to be buried alive, she frames her reply within the context of a rhetorical question to her brother, on the subject of *nomos*.[570]

> Never, I tell you,
> if I had been the mother of children
> or if my husband died, exposed and rotting -
> I'd never have taken this ordeal upon myself,
> never defied our people's will. What law,
> you ask, do I satisfy with what I say?
> A husband dead, there might have been another.
> A child by another, too, if I had lost the first.
> But mother and father both lost in the halls of Death,
> no brother could ever spring to light again.
> For this law alone I held you first in honor.
> For this, Creon the king judges me a criminal
> guilty of dreadful outrage, my dear brother.

> οὐ γάρ ποτ᾽οὔτ᾽ἄν, εἰ τέκνων μήτηρ ἔφυν,
> οὔτ᾽εἰ πόσις μοι κατθανὼν ἐτήκετο,
> βίᾳ πολιτῶν τόνδ᾽ἂν ἠρόμην πόνον.
> τίνος νόμου δὴ ταῦτα πρὸς χάριν λέγω;
> πόσις μὲν ἄν μοι κατθανόντος ἄλλος ἦν,
> καὶ παῖς ἀπ᾽ ἄλλου φωτός, εἰ τοῦδ᾽ ἤμπλακον,

[570] Murnaghan 1986: 193 notes the contradiction with Antigone's earlier insistence on universal laws applicable to everyone.

μητρὸς δ᾽ ἐν Ἅιδου καὶ πατρὸς κεκευθότοιν
οὐκ ἔστ᾽ ἀδελφὸς ὅστις ἂν βλάστοι ποτέ.
τοιῶδε μέντοι σ᾽ ἐκπροτιμήσασ᾽ ἐγὼ
νόμῳ Κρέοντι ταῦτ᾽ ἔδοξ᾽ ἁμαρτάνειν
καὶ δεινὰ τολμᾶν, ὦ κασίγνητον κάρα. (905-15)

Antigone treats this as a duty-imposing law, an obligation, which applies because her brother is irreplaceable. However, it differs significantly from the law she previously invoked, in that it is very specific and relates to the particular circumstances of her case. Harris' model of *nomos* does not reflect the diversity and specificity of some *nomoi*, as with this example, which he does not analyse as a *nomos*, and as with many in the *Histories*. As I have argued throughout this thesis, the definition of *nomos* needs to recognise the force of rules which includes those relating to gender performance, and which may be culturally specific and subject to change.

Antigone specifically rejects motherhood as a basis for disobeying Creon's edict. However, this, for her, is a hypothetical situation; she is not yet a wife or mother. Her natal *oikos* has been destroyed, with Creon now in the role of *kurios*, but has not been replaced with a marital *oikos*. In terms of her status as a woman, she is in limbo. In this, her circumstances are significantly different from Intaphrenes' wife. More significantly, however, the antagonism between her and Creon is absolute. They are at opposite poles in their verbal exchanges. Creon is characterised as a man who fails to deliberate or take advice before he speaks, unlike Intaphrenes' wife. Antigone performs an absolute allegiance to her brother and to the unwritten laws which can find no accommodation with an inflexible king. Whilst Harris is

right to highlight Sophocles' use of dramatic ambiguity, in the meaning of *nomos*, for Creon and Antigone their concept of *nomos* is inviolable, it admits of no nuance or ambiguity, debate or dissent, certainly for as long as Antigone is alive. This contrasts with the Herodotean story, in which lament makes a king pity the woman and offer a concession, and in which remarkable speech acts as a spur to enquiry and prompts a further gift. Both Darius and Intaphrenes' wife show a flexibility which eludes Creon and Antigone.

In giving her a son as well as a brother, Darius, Honig argues, is expressing what would be his choice, namely a son and heir. He is also indicating that 'this is the relative she should have chosen, the one she should have valued the most'.[571] In making this unasked-for gift, Darius 'presses Intaphrenes' wife into futurity by maternalising her against her expressed wishes'.[572] Sancisi-Weerdenburg also sees the king's actions as confirming her duty to 'take motherly care of her children' and to 'guarantee the future of the husband's family'. [573] Murnaghan notes the gift of a son is a corrective as well as a reward.[574] These scholars, therefore, recognise that Darius is enforcing a norm, a social expectation, of motherhood, which he considers Intaphrenes' wife has challenged, through choosing her brother.

However, this surely begs the question why this king would do this; the elimination of Intaphrenes' son is surely a safer option for a king who is consolidating his power. Honig recognises that this complicates the gift 'with its promise of vengeance and joy', but does not develop this argument, as her focus is on *Antigone*.[575] West is the only scholar to highlight this aspect of the story; 'It is hard to imagine a more powerful motive for regicide than the

[571] Honig 2013: 263n59.
[572] Honig 2013: 139.
[573] Sancisi-Weerdenburg 2013: 146.
[574] Murnaghan 1986: 203.
[575] Honig 2013: 139.

desire for vengeance ... Darius' decision to spare Intaphrenes' eldest son does more credit to his heart than to his head'.[576] This indeed is a paradox; a Persian king who is more emotional than a female subject. The sophistic nature of Intaphrenes' wife's cleverness may have been part of the appeal of this story, for Herodotus' audience.[577] Intaphrenes' wife is unusual in comparison with other Persian women. She is a paradox, a puzzle, meant to stimulate debate. However, this story also shows Darius as a king who enforces, not violates *nomos*. He does this partly to consolidate his power, following the coup against the Magi. Nevertheless, his enforcement of a family *nomos* which has the potential to threaten his kingship shows just how strong this unwritten law is. Enforcement of the *nomos* which Intaphrenes breached makes Darius stronger; enforcement of a maternal *nomos* has the potential to weaken him.

To conclude, Darius conducts the debate with Intaphrenes' wife in an inquisitorial rather than an adversarial manner. She meanwhile manages the negotiation skilfully, waiting for her laments to have their effect on the king rather than risking a spoken request which might be rejected. She then thinks through her options before she speaks, and pleases the king with her paradoxical request. Thus, she succeeds in preserving the life of a son as well as a brother. Reading this story as a dialogue rather than an *agōn* reveals that both perform their roles appropriately. Darius is shown to uphold *nomoi*, both political and familial. Intaphrenes' wife fulfils her obligation, to preserve the essential elements of her *oikos*. This is a story which uses a Persian king to voice a *nomos* which asks questions about maternalism and motherhood, and the gap between the priorities mothers should have and those they do have. It is also about a woman whose performance both as lamenter and speaker seeks to persuade and does so successfully, unlike Antigone, and who takes a rational rather than an emotional

[576] West 2003: 435 -6
[577] Neuberg 1990: 57-8; West 2003: 435.

approach to what is a question of life and death. It is also a story which suggests that the polarity model in gender relations does not always reflect the negotiations and strategies adopted by Herodotus' characters, both those in power and those subject to their power. Finally, it leads us to question any essentialist view of what a mother is or ought to be, and shows that characters like Darius may indeed be surprised when those views are confounded.

Conclusion

In this chapter, I have used the Candaules' story to argue that there are limits on the exercise of power by a tyrant who violates the rules of the *oikos* and ignores the legitimate expectations of his wife. She, however, is unique in the *Histories* in assuming a quasi-judicial function as a woman, punishing the breach of *nomos* by exercising the power of life and death, like male royals, thereby showing *nomos* in its coercive aspect. By contrast, I have analysed the Spartan stories as a strategic engagement with *nomos*, showing the flexible approach to family *nomoi* shown by Spartan kings and queens, but still based on a commitment to preserving the *oikos* and promoting the interests of the various factions with the Spartan royal family.

The Persian stories, I argue, show different aspects of 'living with the rules' of tyranny, from a gender perspective. The royal *oikos* is a dangerous place for women who speak out, but Herodotus also shows that Cambyses destroys his own *oikos* and dynasty because he kills the woman who warns him of the risks he is taking with its security. Cyno, by contrast, is able to speak freely and act because of her distance from the royal *oikos*. The story of Intaphrenes' wife gives us a different model of tyranny in which it is possible to modify though not change the king's mind, whereas the story of Xerxes shows us a dysfunctional *oikos*, in which

Amestris in particular is portrayed as cruel, vindictive and vengeful, in contrast with Masistes' wife, who is shown in a gender-appropriate relationship with her husband. There is also a disjuncture between the rhetoric of preserving the royal *oikos*, and events in the wider narrative, where kings end up destroying it. Darius, I suggest, is an exception to this rule in that he preserves his *oikos* and the key components of that of Intaphrenes' wife. In all these stories, therefore, Herodotus gives us a nuanced view of what it is to live with the rules of tyranny. Not all tyrants oppress women in the same way and some women are shown to exercise agency in oppressive circumstances. Moreover, Herodotus shows that the rule of law applies to the *oikos*, imposing an obligation on everyone, including kings, to safeguard the *oikos* rather than put it at risk.

In my next chapter, I examine the coercive military Spartan *nomos* of 'win or die' in the context of constructions of masculinity, both within the *Histories*, and more widely in texts which interrogate the gender *nomos* of *andreia*. I then apply this to the stories of three powerful women, Tomyris, Pheretime and Artemisia, who adopt a masculine role, which demands consideration of how the men in these stories perform masculinity themselves.

CHAPTER 5: HOW DOES *NOMOS* REGULATE MALE GENDER PERFORMANCE?

Introduction

In my last chapter, my focus was on women in the *oikos*, and the different ways they conformed to, enforced, and, at times, resisted female gender rules and tyranny. I also showed women as well as men in the Spartan *oikos* taking a flexible approach to *nomos*. In this chapter, my focus is on performances of masculinity, in particular, the coercive Spartan *nomos* of 'win or die', the ideology of female inferiority which underpins it, and its practical application.

I then consider in detail the relationship between power, *nomos* and gender, in particular, the extent to which the constraints of *nomos* and of gender apply to women who perform a masculine role in exercising military and political power. I will argue that Herodotus uses the character of Artemisia to highlight the contested aspect of *andreia*, both in speech and action, and that both she and Themistocles are shown to be characters of *mētis*, able to manipulate rules and relationships to succeed. I will show that powerful men sometimes underestimate female capacity, and do not live up to gender expectations themselves; conversely women sometimes defy those expectations. However, the downfall for Cyrus, Pheretime and Xerxes is ultimately because, in seeking to go beyond boundaries that separate humans from gods, they are corrupted by power.[578]

[578] Much of this chapter is discussed in Tank 2019: 74-88 'Powerful women and gender ideology in Herodotus' *Histories*'.

I have argued that femininity is a performance, regulated and evaluated by others, to whom one is accountable. The same is true of performances of masculinity. Atys anticipates censure from the community and from his wife if Croesus prevents him performing a masculine role in the hunt (1.35.1), showing women as well as men policing male performances of gender. This challenge to 'prove oneself to be a man' is seen elsewhere as a motivating factor, for example, when Oroetes 'conceives a desire to commit an act which lacked mortal and divine authority' (ἐπεθύμησε πρήγματος οὐκ ὁσίου, 3.120.1), his motivation, whichever of the two accounts given by Herodotus is preferred, is based on a personal insult.[579] One of these insults is to suggest that his failure to capture Samos calls his manliness into question; Mitrobates taunts him with this rhetorical question: Call yourself a man? (σὺ γὰρ ἐν ἀνδρῶν λόγῳ; 3.120.3). Similarly, Atossa' appeal to Darius to pursue the Persian *nomos* of expansionism includes an injunction for him to prove his manly qualities:

> The right thing for a man who is both young and the master of great wealth is to be seen to accomplish something big, so that the Persians know too that they are ruled by a real man. On two counts it is in your interest to do this, both so that the Persians know that their leader is a man, and so that they be occupied by war and not have time to plot against you.
>
> οἰκὸς δὲ ἐστὶ ἄνδρα καὶ νέον καὶ χρημάτων μεγάλων δεσπότην φαίνεσθαί τι ἀποδεικνύμενον, ἵνα καὶ Πέρσαι ἐκμάθωσι ὅτι ὑπ᾽ ἀνδρὸς ἄρχονται. ἐπ᾽ ἀμφότερα δέ τοι συμφέρει ταῦτα ποιέειν, καὶ ἵνα σφέων Πέρσαι ἐπίστωνται ἄνδρα εἶναι τὸν

[579] *LSJ*: The sense of ὅσιος often depends on its relation on the one hand to δίκαιος (sanctioned by *human* law), on the other to ἱερός (*sacred* to the gods). Asheri 2007: 507 'Oroetes' impiety consists of having plotted the killing of Polycrates without a motive of personal grudge'. Baragwanath 2008: 96-100.

προεστεῶτα, καὶ ἵνα τρίβωνται πολέμῳ μηδὲ σχολὴν ἄγοντες ἐπιβουλεύωσί τοι, 3.134.2

This gender ideology, therefore, is used as a motivating factor in war, by women as well as men, and is based on the binary opposition of male and female; *andreia* is a quality which excludes women.[580] The performance of *andreia,* likewise, means not only acting in a manly way but also being judged by others to do so.

It is reinforced by the ideology of female inferiority, based on the binary opposition of male and female, as articulated by both Persians and Athenians. Artemisia, on the eve of the battle of Salamis, advises Xerxes, king of the Persians: 'Do not commit the fleet to a battle, because at sea your men will be as far inferior to the Greeks as women are to men' (φείδεο τῶν νεῶν μηδὲ ναυμαχίην ποιέο. οἱ γὰρ ἄνδρες τῶν σῶν ἀνδρῶν κρέσσονες τοσοῦτο εἰσὶ κατὰ θάλασσαν ὅσον ἄνδρες γυναικῶν, 8.68). Xerxes echoes her words in the aftermath of his defeat, when he explains it as an inversion of gender roles: 'my men have become women, my women men' (οἱ μὲν ἄνδρες γεγόνασί μοι γυναῖκες, αἱ δὲ γυναῖκες ἄνδρες, 8.88). The same binary opposition is rehearsed before the battle of Plataea the following year, when the Persian horsemen taunt the Greeks by calling them women (προσβάλλοντες δὲ κακὰ μεγάλα ἐργάζοντο καὶ γυναῖκας σφέας ἀπεκάλεον, 9.20), the harshest of insults for Persian men (παρὰ δὲ τοῖσι Πέρσῃσι γυναικὸς κακίω ἀκοῦσαι δέννος μέγιστος ἐστι, 9.107), to encourage their own men to fight bravely.

In this chapter, I will analyse the performance aspect of gender, in particular of masculinity in the context of war, and I will consider relationships between men and the creation of

[580] Branscome 2013: 70-72; Cartledge 2002: 83.

hierarchies, not only in the Persian court but also in the Greek alliance. I will show that normative conceptions of appropriate masculine attitudes and activities are variable and can change with time.[581] Again, this links to one of Hart's secondary rules, the rule of change, which provides necessary flexibility in any legal system. I will argue, therefore, that Herodotus shows *andreia* (manliness) to be a social construct rather than an innate characteristic of men by making the performance of gender regulated by changeable *nomoi*, at times deceptive, and dependent on the judgment of others, both Herodotus himself and characters in his text.

1. What are the rules of masculinity?

a) Spartans

They are free, yet not completely free: the rule is their master, which they fear much more than your men fear you. Each man does what the rule commands, and its command never changes, which is that they should not flee from battle, no matter how many men are ranged against them, but stay in line and either win or die.

ἐλεύθεροι γὰρ ἐόντες οὐ πάντα ἐλεύθεροι εἰσί: ἔπεστι γάρ σφι δεσπότης νόμος, τὸν ὑποδειμαίνουσι πολλῷ ἔτι μᾶλλον ἢ οἱ σοὶ σέ. ποιεῦσι γῶν τὰ ἂν ἐκεῖνος ἀνώγῃ: ἀνώγει δὲ τὠυτὸ αἰεί, οὐκ ἐῶν φεύγειν οὐδὲν πλῆθος ἀνθρώπων ἐκ μάχης, ἀλλὰ μένοντας ἐν τῇ τάξι ἐπικρατέειν ἢ ἀπόλλυσθαι. (7.104-5)

b) Persians

After bravery in battle, manliness is proved above all by producing plenty of sons

[581] West and Zimmerman 1987: 148n.3.

> ἀνδραγαθίη δὲ αὕτη ἀποδέδεκται, μετὰ τὸ μάχεσθαι εἶναι ἀγαθόν, ὃς ἂν πολλοὺς ἀποδέξῃ παῖδας (1.136)

To what extent do these military *nomoi* reflect contemporary thinking on *andreia*? In Aeschylus' *Seven against Thebes*, the seven possess 'iron-hearted spirit, blazing with courage' (σιδηρόφρων γὰρ θυμὸς ἀνδρείᾳ φλέγων, A. *Th*. 52) and in Euripides' *Andromache* it is also a virtue associated with performance on the battlefield: 'ignorant of weapons and battle, they went on to learn military valour' (ὅπλων γὰρ ὄντες καὶ μάχης ἀίστορες, ἔβησαν εἰς τἀνδρεῖον, E.*Andr*. 682-3). However, in Euripides' *The Suppliants*, the Theban herald argues that 'foresight, too, is a kind of *andreia*' (καὶ τοῦτ'ἐμοὶ τ'ἀνδρεῖον, ἡ προμηθία, E.*Supp*. 510) and, in the circumstances of the revolution in Corcyra, Thucydides notes that words were changing their meaning:

> To fit in with the change of events, words, too had to change their meanings. What used to be described as a thoughtless act of aggression was now regarded as the courage one would expect to find in a party member; to think of the future and wait was merely another way of saying one was a coward; any idea of moderation was just an attempt to disguise one's unmanly character; ability to understand a question from all sides meant that one was totally unfitted for action. Fanatical enthusiasm was the mark of a real man and to plot against an enemy behind his back was perfectly legitimate self-defence.[582]
>
> καὶ τὴν εἰωθυῖαν ἀξίωσιν τῶν ὀνομάτων ἐς τὰ ἔργα ἀντήλλαξαν τῇ δικαιώσει. τόλμα μὲν γὰρ ἀλόγιστος ἀνδρεία φιλέταιρος ἐνομίσθη, μέλλησις δὲ προμηθὴς δειλία εὐπρεπής, τὸ δὲ σῶφρον τοῦ ἀνάνδρου πρόσχημα, καὶ τὸ πρὸς ἅπαν ξυνετὸν ἐπὶ πᾶν

[582] Rex Warner's translation

> ἀργόν: τὸ δ᾽ ἐμπλήκτως ὀξὺ ἀνδρὸς μοίρᾳ προσετέθη, ἀσφαλείᾳ δὲ τὸ ἐπιβουλεύσασθαι ἀποτροπῆς πρόφασις εὔλογος (*Th*.3.82.4)

Moderation is equated with lack of manliness (τὸ δὲ σῶφρον τοῦ ἀνάνδρου πρόσχημα) which is now associated with a thoughtless act of aggression (τόλμα ... ἀλόγιστος). *Andreia,* in other words, now has a negative not a positive connotation, as a feature of *stasis*.[583] In Aristophanes' *Lysistrata*, the word is used as parody, when a woman 'plays' at being a man; the chorus greet Lysistrata as 'most manly of all women' (χαῖρ᾽ ὦ πασῶν ἀνδρειοτάτη, *Ar*. Lys. 1108).[584] When Plato comes to consider the question 'What is *andreia*?' in his dialogue *Laches*, between Socrates, Laches, and Nicias, there is no clear-cut answer:

> Socrates
>
> Try to answer my question: what is courage?
>
> Laches
>
> ... that's not difficult: anyone who is willing to stay at his post and face the enemy, and does not run away, you may be sure, is courageous
>
> Socrates
>
> ἀλλὰ πειρῶ εἰπεῖν ὃ λέγω, τί ἐστιν ἀνδρεία.
>
> Laches
>
> ... οὐ χαλεπὸν εἰπεῖν: εἰ γάρ τις ἐθέλοι ἐν τῇ τάξει μένων ἀμύνεσθαι τοὺς πολεμίους καὶ μὴ φεύγοι, εὖ ἴσθι ὅτι ἀνδρεῖος ἂν εἴη. (Pl. *Laches.* 190e)

[583] Bassi 2003: 27-28.
[584] Bassi 2003: 46.

Socrates, predictably, challenges Laches' simple definition, suggesting *andreia* could be defined as 'foolish daring' (ἡ ἄφρων τόλμα, Pl.*La*. 193d), echoing Thucydides' negative connotation, and concludes by saying 'We have failed to discover what courage really is (οὐκ ἄρα ηὑρήκαμεν ... ἀνδρεία ὅτι ἔστιν, Pl.*La*. 199). *Andreia* has become a contested virtue, to be examined and debated by historians and philosophers, and made into comedy by the playwright.[585] To what extent, therefore, does Herodotus' narrative reflect or foreshadow this debate?

2. *Andreia* in the *Histories*

Herodotus reflects the contested nature of *andreia* in his portrayal of Artemisia. I will show that, in her, it is a quality not associated with heroic deeds but with forthright speech and freedom of action. Her story is not the only one to problematise *andreia*. Telines of Sicily, who held the priesthood of the chthonian goddesses, was described by his contemporaries as a rather womanly and soft man (θηλυδρίης τε καὶ μαλακώτερος ἀνήρ, 7.153.4) but nevertheless achieved a form of dispute resolution, the restoration of Geloan exiles, using sacred rites, rather than a force of men (ἔχων οὐδεμίαν ἀνδρῶν δύναμιν ἀλλὰ ἱρὰ τούτων τῶν θεῶν, 7.153.3).[586] Herodotus finds this remarkable:

> Now it is a wonder to me that Telines should have achieved such a feat, for I have always supposed that such deeds can only be performed by such a man as has a courageous heart and manly strength.

[585] Bassi 2003: 55.
[586] Sebillote Cuchet 2013: 409-10.

> θῶμά μοι ὦν καὶ τοῦτο γέγονε πρὸς τὰ πυνθάνομαι, κατεργάσασθαι Τηλίνην ἔργον τοσοῦτον: τὰ τοιαῦτα γὰρ ἔργα οὐ πρὸς τοῦ ἄπαντος ἀνδρὸς νενόμικα γίνεσθαι, ἀλλὰ πρὸς ψυχῆς τε ἀγαθῆς καὶ ῥώμης ἀνδρηίης. (7.153.4)

Herodotus thereby shows that male as well as female appearances can be deceptive; Telines' looks belie his achievements. The following examples also illustrate the provisional nature of *andreia* which can be lost as well as won. Cyrus is described as the most manly and well-liked of his contemporaries (τῶν ἡλίκων ἀνδρηιοτάτος καὶ προσφιλεστάτος, 1.123.1) as a young man, but is shown to lose his *andreia*, in his encounter with Tomyris, when she performs the masculine role of valour in battle, not him, as I will show in my case study. When the Lydians are facing a battle with Cyrus 'there was no braver or more warlike race in Asia' (ἦν ... ἔθνος οὐδὲν ἐν τῇ Ἀσίῃ οὔτε ἀνδρηιότερον οὔτε ἀλκιμώτερον τοῦ Λυδίου, 1.79.3), but their continuing rebellion against Cyrus leads Croesus to make proposals to the king, as an alternative to slavery, which are intended to feminise the Lydians, to change external markers of gender, from male to female, to make them perform female rather than male activities, and to train their boys to be retailers rather than warriors:

> Send and forbid them to possess weapons of war, and order them to wear tunics under their cloaks and knee-boots on their feet, and to teach their sons lyre-playing and song and dance and shop-keeping. And quickly, O king, you shall see them become women instead of men, so that you do not have to fear that they might revolt.
>
> ἄπειπε μέν σφι πέμψας ὅπλα ἀρήια μὴ ἐκτῆσθαι, κέλευε δὲ σφέας κιθῶνάς τε ὑποδύνειν τοῖσι εἵμασι καὶ κοθόρνους ὑποδέεσθαι, πρόειπε δ' αὐτοῖσι κιθαρίζειν τε καὶ ψάλλειν καὶ καπηλεύειν παιδεύειν τοὺς παῖδας. καὶ ταχέως σφέας ὦ βασιλεῦ

> γυναῖκας ἀντ᾽ ἀνδρῶν ὄψεαι γεγονότας, ὥστε οὐδὲν δεινοί τοι ἔσονται μὴ ἀποστέωσι. (1.155.4)

Croesus' advice to Cyrus, however, needs further consideration; does becoming a shopkeeper (καπηλεύειν, 1.155.4) feminise you? Ruffing uses this passage to argue that 'for Herodotus, selling by retail is a form of emasculation', making Darius a 'huckster'[587] (κάπηλος, 3.89.3) who lacks warrior virtues.[588] This is in the context of Ruffing's overall argument that Herodotus intends to draw a parallel between the Persian defeat by the Greeks and Athens' defeat by Sparta, whereby Darius' imposition of tribute foreshadows Athens' imperial ambitions and need for money from subject *poleis*, and signposts a move away from the poverty which makes bravery possible.

My first point is that the two passages to which Ruffing refers are not comments by Herodotus as narrator; the first is in direct speech given to Croesus, the second records the Persians' own view of their own rulers:

> The Persians say that Darius is a retailer, because he put a price on everything, Cambyses is a despot, because he was cruel and restrictive and Cyrus, a father who was kind and set up everything for their own good
>
> λέγουσι Πέρσαι ὡς Δαρεῖος μὲν ἦν κάπηλος, Καμβύσης δὲ δεσπότης, Κῦρος δὲ πατήρ, ὃ μὲν ὅτι ἐκαπήλευε πάντα τὰ πρήγματα, ὁ δὲ ὅτι χαλεπός τε ἦν καὶ ὀλίγωρος, ὁ δὲ ὅτι ἤπιός τε καὶ ἀγαθά σφι πάντα ἐμηχανήσατο (3.89.3)

[587] Ruffing's translation of κάπηλος.
[588] Ruffing 2018: 153-161.

Herodotus is showing the Persians' own judgment on their rulers, not his own, and they are differentiating between their kings not on the basis of military prowess, but their wider actions as Persian kings.

As for the passage in direct speech by the character Croesus to Cyrus (1.155.4) this has to be contextualised as a piece of rhetoric intended to persuade. As Herodotus does say as narrator, Croesus has three reasons for making this proposal: being feminised is a better option than being enslaved (ἀνδραποδισθέντας), he had to make a persuasive proposal (ἀξιόχρεον πρόφασιν) to make Cyrus change his mind, and any future revolt by the Lydians against the Persians would lead to their compete destruction (ἀποστάντες ἀπὸ τῶν Περσέων ἀπόλωνται, 1.156.1). The proposal he makes is persuasive because this king is influenced by the gender ideology which makes women inferior to men, as he will be before he takes on the Massagetae, mistakenly as Herodotus shows. Being called a woman may be the worst insult for a Persian but enslavement is a worse fate than having to give up one's fighting ability, highlighting a gap between ideology and practice.

I question, therefore, Ruffing's conclusion that Darius lacks warrior virtues, because these are not shown to be innate qualities in the *Histories*, but performed in battle, and proved through victory. The Getae are described as very brave and just (ἀνδρηιότατοι καὶ δικαιότατοι, 4.93) and are the only Thracians to resist the Persians, but their reward is to be enslaved by Darius. Leonidas, by contrast, becomes the best of men (ἀνὴρ γενόμενος ἄριστος, 7.224.1) when he dies at Thermopylae, and with him the other Spartans whose names Herodotus learnt as worthy to be called men (τῶν ἐγὼ ὡς ἀνδρῶν ἀξίων γενομένων ἐπυθόμην τὰ οὐνόματα,

7.224.1). They have proved themselves to be men through their performance in battle.[589] As with all Persian kings in the *Histories*, Darius is shown in differing guises, both as something of a trickster and authoritarian, when he takes power, to being a successful administrator of his expanding empire and 'not without humanity and paternalistic wisdom' as I showed in the story of Intaphrenes' wife.[590] In gender terms, he is unlike other Persian kings in not being persuaded by an ideology of female inferiority or performances of female beauty; that is the mistake the Paeonian brothers make when they parade their sister before him, thinking her beauty will persuade. In fact, as I showed in chapter 3, Darius seeks to possess female hard work, not beauty.

Herodotus himself discriminates between men, for example, in the story of Helen. Hector is not only older than Alexander but more of a man (καὶ πρεσβύτερος καὶ ἀνὴρ ἐκείνου μᾶλλον ἐὼν, 2.120.4) and 'it would not have been appropriate for him to allow his brother to act unjustly' (τὸν οὐ προσῆκε ἀδικέοντι τῷ ἀδελφεῷ ἐπιτρέπειν, 2.120.4). However, in this story, performances of gender are of less significance, in Herodotus' opinion, than the message of Trojan annihilation that 'divine retribution is as great as the wrongdoing it punishes' (ὡς τῶν μεγάλων ἀδικημάτων μεγάλαι εἰσὶ καὶ αἱ τιμωρίαι παρὰ τῶν θεῶν. καὶ ταῦτα μὲν τῇ ἐμοὶ δοκέει εἴρηται, 2.120.5.)[591] There are some circumstances where it does not matter how well you perform as a man. The normative male, therefore, is shown to be an unstable construct, subject to continuing judgment and scrutiny, and liable to change. I will now consider to what extent this applies in a military context.

[589] Other examples, given by Chiasson 2005: 55 of those who become men in battle: 7.181.1; 7.226.1; 8.123.2; 9.71.2.
[590] Asheri 2007: 478 (quotation); Waterfield 1998: 638.
[591] Flower and Marincola 2002: 193-4 on the motif of the best/bravest at war in the *Histories*.

3. The Spartan *nomos* of win or die

The military *nomos* of win or die is a coercive force which dictates male conduct in battle, no matter what the circumstances, and is reinforced, as I have shown, by an ideology of female inferiority which is articulated by both Persians and Athenians, with characters, male and female, contrasting the inferior female 'other' with the superior normative male. However, it is also enforced through social pressure, the shaming of those who are perceived to perform gender roles inappropriately. As the story of Candaules' wife illustrates, it is shaming for a woman to be exposed to the gaze of an unrelated male, whereas, for men, cowardice, failing to live up to the Spartans' *nomos* of win or die, is shameful. Orthryades commits suicide because he was too ashamed (αἰσχυνόμενον, 1.82.8) to return to Sparta after the Battle of the Champions. The man who fails to live up to the expectations of him as a warrior is a coward, just like a woman, and the ideology is reinforced by social control, as illustrated by the case of Aristodemus, who did not fight at Thermopylae:

> When Aristodemus returned to Sparta, he was disgraced and without honour. He was deprived of his honour in this way: no Spartan would give him fire or speak with him, and they taunted him by calling him Aristodemus the Trembler. In the battle at Plataea, however, he made up for all the blame brought against him.
>
> ἀπονοστήσας δὲ ἐς Λακεδαίμονα ὁ Ἀριστόδημος εἶχε ὄνειδός τε καὶ ἀτιμίην: πάσχων δὲ τοιάδε ἠτίμωτο: οὔτε οἱ πῦρ οὐδεὶς ἔναυε Σπαρτιητέων οὔτε διελέγετο. ὄνειδος δὲ εἶχε ὁ τρέσας Ἀριστόδημος καλεόμενος. ἀλλ᾽ ὃ μὲν ἐν τῇ ἐν Πλαταιῇσι μάχῃ ἀνέλαβε πᾶσαν τὴν ἐπενειχθεῖσαν αἰτίην (7.231)

He is excluded from civil society, shunned, shamed, the object of contempt and only redeems himself by fighting to the death at the battle of Plataea. There is a social stigma to being called

a coward.[592] The rules are enforced at home, by women as well as men; Aristodemus is punished through social exclusion. Though Hodkinson writes that cowardice in battle was 'a public affair subject to official investigation and adjudication', juridical and political penalties are not mentioned by Herodotus. In his narrative, the penalty is informal, not imposed through institutional means, and therefore involves both genders in enforcement.[593]

To what extent, though, were these rules practised? Ducat finds that offences linked to the crime of cowardice were not strictly defined or codified, but part of Sparta's official ideology, 'the image Sparta presented to the outside world' and 'the trembler' was an ideal construct to mask divergence from Demaratus' code.[594] Evidence for this divergence can be found in the *Histories* in that military strategy at Plataea has to take account of the practical effects of war. When the Persian cavalry block the army's water supply (9.49.2), Pausanias and the other Greek commanders make a decision that a strategic retreat is preferable to an immediate engagement; 'the narrative makes sense both in its own terms and as an explanation of how people actually act in times of stress: after a long day of continual harassment without food and water, the flight of the centre, albeit irresponsible and cowardly, is not at all surprising or unnatural'.[595] Amompharetus, however, takes the Spartan despotic *nomos* literally, so retreat becomes an act of cowardice; he is not willing to bring shame on Sparta by retreating from the 'strangers' (οὐκ ἔφη τοὺς ξείνους φεύξεσθαι οὐδὲ ἑκὼν εἶναι αἰσχυνέειν τὴν Σπάρτην, 9.53.2). He has to be persuaded that such literal adherence to the *nomos* is unnecessary in the circumstances (ἐπειρῶντο πείθοντές μιν ὡς οὐ χρεὸν εἴη ταῦτα ποιέειν, (9.53.4).

[592] Branscome 2013: 59,70.
[593] Hodkinson 2006: 144.
[594] Ducat 2006: 10-16, 49.
[595] Flower and Marincola 2002: 200.

Blösel calls his rebellion 'totally inappropriate in a battlefield situation' but this is to ignore the Spartan *nomos* which requires men to 'win or die', and not to submit obediently to the orders of a tyrant.[596] Flower and Marincola's reading is more sympathetic of Amompharetus, seeing him motivated by Homeric qualities of heroism, whereas I read it more as a portrayal of an individual who has successfully internalised the Spartan *nomos*.[597] Blösel's wider argument is that Sparta, as much as Athens, often failed to live up to its own ideals, and that the central characteristic of the Spartans was 'hesitation, fear and vacillation' not adherence to the Spartan *nomos* of 'win or die'.[598] However, the situation before and during the battle of Plataea is surely more complex than he allows, and requires different qualities in leaders. It is true that Herodotus attributes fear of the Persians to Pausanias (9.46.1) and he is taunted by Mardonius for diverging from Demaratus' code:

> Men of Lacedaemon, you are said by the people of these parts to be very brave men. It is their boast of you that you neither flee from the field nor leave your post, but remain there and either slay your enemies or are yourselves killed. It would seem, however, that there is no truth in all this
>
> 'ὦ Λακεδαιμόνιοι, ὑμεῖς δὴ λέγεσθε εἶναι ἄνδρες ἄριστοι ὑπὸ τῶν τῇδε ἀνθρώπων, ἐκπαγλεομένων ὡς οὔτε φεύγετε ἐκ πολέμου οὔτε τάξιν ἐκλείπετε, μένοντές τε ἢ ἀπόλλυτε τοὺς ἐναντίους ἢ αὐτοὶ ἀπόλλυσθε. τῶν δ᾽ ἄρ᾽ ἦν οὐδὲν ἀληθές (9.48.1-2)

However, is this not the rhetoric of war that we would expect from a military opponent, just as the Persian cavalry insult the Greeks as 'women' when they inflict severe losses in a cavalry charge? Actual military outcomes tell a different story, however; at the battle of

[596] Blösel 2018: 247.
[597] Flower and Marincola 2002: 201-203.
[598] Blösel 2018: 253-264.

Plataea, the Greeks defeat the Persians and Pausanias' tactics prove correct. His responsibility and the power he is given in the Spartan hierarchy of command is to use tactics and strategy to achieve a successful outcome, not necessarily to conform to *despotēs nomos*, but to use it as a tool, at the appropriate time. Herodotus' own judgment is that 'the most glorious of victories of all which we know was won by Pausanias' (νίκην ἀναιρέεται καλλίστην ἁπασέων τῶν ἡμεῖς ἴδμεν Παυσανίης, 9.64.1).

Herodotus, therefore, shows that this *nomos* can be a tool as well as a master and that we need to distinguish between Spartans. Pausanias with the high status of commander has to 'live with' this rule by making strategic decisions in the light of circumstances, whereas Aristodemus in the end 'wins and dies' at Plataea by accepting the rule as a coercive order.

4. Gender fluidity: the case of Artemisia

When introducing Artemisia as a character in his history, Herodotus makes three key observations about her. Firstly, 'it is a great wonder to me that Artemisia, a woman, went to war against Greece' (Ἀρτεμισίης δὲ τῆς μάλιστα θῶμα ποιεῦμαι ἐπὶ τὴν Ἑλλάδα στρατευσαμένης γυναικός, 7.99.1). Secondly, 'she was accustomed to wage war with a manly spirit and purpose, and under no compulsion' (ὑπὸ λήματός τε καὶ ἀνδρηίης ἐστρατεύετο, οὐδεμιῆς οἱ ἐούσης ἀναγκαίης, 7.99.1) and, thirdly, she gave Xerxes the best advice of all his allies (πάντων τε τῶν συμμάχων γνώμας ἀρίστας βασιλέι ἀπεδέξατο, 7.99.3). The first of these observations recalls the historian's programmatic statement at the start of the *Histories* when he announces his intention to ensure that great and remarkable deeds do not become uncelebrated (μήτε ἔργα μεγάλα τε καὶ θωμαστά ... ἀκλεᾶ γένηται, *Proem*). In finding Artemisia remarkable, Herodotus acknowledges that is it unusual for a woman to fight, but he

also recognises that her military achievements are worth preserving. Herodotus also found Telines of Sicily (θῶμά μοι ὦν, 7.153.4) remarkable. In both cases, the *thōma* is behaviour that is unusual in a woman or in a man who looks like a woman.

Artemisia is the only women in the *Histories* to whom Herodotus attributes *andreia*, though she is not the only one to fight, suggesting a quality beyond military prowess. Her manly spirit and purpose is linked to her political autonomy. She takes power on her husband's death, when her son is not old enough to rule (αὐτή τε ἔχουσα τὴν τυραννίδα καὶ παιδὸς ὑπάρχοντος νεηνίεω, 7.99.1) and chooses to fight on the side of the Persians, rather than being compelled to do so, unlike most of Persia's allies and indeed most of those fighting for the Greek alliance.[599] Herodotus as narrator does not judge such behaviour inappropriate, whereas he notes the Athenians' indignation at her attack on Athens (δεινὸν γάρ τι ἐποιεῦντο γυναῖκα ἐπὶ τὰς Ἀθήνας στρατεύεσθαι, 8.93.2), their hostility to what, in Athenian terms, is a breach of a gender *nomos*, a woman who fights. Sophocles dramatises this issue in *Electra* when he portrays a protagonist who imagines winning honour, jointly with her sister, for manliness (τιμᾶν ἅπαντας οὕνεκ' ἀνδρείας χρεών, S. *El*. 983), by killing Clytemnestra and Aegisthus; as Goldhill writes, 'the image of the armed woman is not a comfortable one for the Athenian imagination, nor is the female political revolutionary'.[600] Chysothemis voices the prevailing Athenian ideology when she reminds her sister that 'you are by nature a woman not a man' (γυνὴ μὲν οὐδ' ἀνὴρ ἔφυς, S. *El*. 997).

As well as waging war, Artemisia is naval commander (ἠγεμόνευε, 7.99.2) with capacity to supply five ships (παρείχετο, 7.99.3) to the Persian fleet and ruler of her country. Herodotus'

[599] Munson 1988: 95-97, 102.
[600] Goldhill 2012: 243.

use of the imperfect in these verbs suggests that waging war, commanding the fleet and providing ships are part of her role as ruler, not specific actions taken in response to a particular situation, and this role involves giving advice to the king on matters of strategy as well as fighting on his behalf. Thus, Artemisia performs her role in accordance with the Halicarnassian *nomos* of tyranny which allows for a female ruler. Tomyris also exercises power in accordance with Massagetan *nomos* but she only engages in battle with Cyrus (συνέβαλε Κύρῳ, 1.214.1) where the aorist is used to signify a single action taken by the queen, when negotiations had failed, and where, as I will show, she wants to avoid war. Artemisia, by contrast, performs the role as commander-in-chief of her country's military forces as part of her function as ruler; she practises what, in ideological terms, is the role of the normative male ruler. The third attribute Herodotus gives to Artemisia is advisor; she gives the king the best advice and is the only one of the king's allies who is not constrained by fear, and speaks freely. In summary, then, we have, in 7.99, a mini-*proem* introducing Herodotus' account of Artemisia, and highlighting the significant themes that he will explore and test; her status as a remarkable or unusual woman, as someone who possesses *andreia*, and as an excellent advisor.

Munson's article published in 1988 remains the fullest, most sophisticated analysis of the Artemisia story.[601] She starts her analysis of this story in terms of a Greek-barbarian antithesis reflected in the Greek mind by the contrast between male and female; by proving inadequate in the masculine task of war, the Persians are characterised as female, that is, soft, devious, ferocious, and liable to excess, and the predominance of female influence on Persian kings is dangerous. Gender, therefore is a signifier of Persian 'otherness' and Artemisia, as a powerful

[601] Munson 1988: 91-106.

woman, allied to the Persians, both embodies and expresses the metaphor of 'women becoming men and men, women'.[602] However, Munson's main argument is that in many ways Artemisia, 'representative of a straight male world, like a cultured Athena'[603] eventually becomes identified with a topsy-turvy world, threatening to Hellas, which resembles Athens more than it does Persia.[604] She thereby deconstructs the Greek-barbarian antithesis, anticipating more recent scholarship which puts greater emphasis on cultural borrowing and the agency of non-Greek sources.[605]

In her article, she draws parallels between the character of Artemisia, and that of Themistocles, in that both practise *isēgoriē*, giving opinions that are contrary to the majority view, and both are capable of deception and trickery (*mētis*) for the sake of self-preservation.[606] She also suggests that Artemisia and the Athenians are similar in playing a significant role in naval battles, in being free agents, and smart tacticians, and in acting ultimately out of self-interest. The Athenians, she argues, are shown during the course of the *Histories* to move from Athenian Panhellenism, and idealism (8.143 and 8.144.1-2) to a more pragmatic and self-serving approach with an introduction of the antithesis between the useful and the just: [607]

> We know that it is more to our advantage to make terms with the Persians than to wage war with him, yet we will not make terms with him of our own free will.
>
> ἐπιστάμενοί τε ὅτι κερδαλεώτερον ἐστὶ ὁμολογέειν τῷ Πέρσῃ μᾶλλον ἢ περ πολεμέειν: οὐ μὲν οὐδὲ ὁμολογήσομεν ἑκόντες εἶναι. (9.7.2)

[602] Munson 1988: 93; 2013b: 7.
[603] Munson 1988: 94.
[604] Munson 1988: 94.
[605] Gruen 2011; Vlassopoulos, 207; Skinner 2012, 2018; Harrison and Irwin 2018: 6-8.
[606] Munson 1988: 97-100.
[607] Munson 1988: 95-97, 101-2.

This, of course, is part of a wider debate about the extent to which Herodotus' *Histories* anticipate events beyond his text, both Athenian imperial ambitions and actions, and Spartan foreign policy, for an audience who knew, for example, about the downfall of Xerxes and Pausanias.[608] Harrell argues that it is Artemisia's ethnic ambiguity which accounts for her ability to embody *andreia*; both Greek and non-Greek, she reflects the hybrid nature of Halicarnassus and would be a marginal figure for Greeks.[609] Bassi gives more weight to the gender ambiguity in Artemisia, reflecting the increasingly contested meaning of the word *andreia*, whereby, in her case, it signifies ethical and political expedience and the absence of heroic valour.[610] My analysis will focus more on the gender aspect of the story and I will consider the final part of the story, Artemisia's role with Xerxes' children, unlike most commentators, because I argue that the importance of this is to signpost the complexity of gender identities for which a non-binary approach is appropriate.

Sebillote Cuchet rejects the view that gender polarity is a structural feature of the *Histories* arguing that Herodotus mentions Artemisia's gender to stress the unusual nature of an expeditionary force led by a woman and to explain the Athenians' hostility towards her, but he does not, in her view, view her gender as having any impact on either her tactical intelligence or her conduct in battle; 'les régimes de genre son variés, semble dire Hérodote, l'un ne valant pas plus ni moins qu'un autre'.[611] Sebillote Cuchet, therefore, emphasises the contrast between Athenian gender ideology and the relativist view she attributes to Herodotus. However, this ignores the rhetorical use of the inferiority of women, which is significant, as I

[608] Fornara 1971 revisited in Harrison and Irwin 2018.
[609] Harrell 2003: 82-88.
[610] Bassi 2003: 41-44.
[611] Sebillote Cuchet 2013: 428-9 'Gender regimes differed, Herodotus appears to say, and none were of greater or lesser value than any other'.

have already argued. It also overstates the opposite view, that gender has no impact. In fact, gender, both male and female, is extremely significant in this story requiring us to deconstruct manliness as an attribute, if it can be given to a woman.

4.1 Artemisia as orator: first speech

Her first speech follows a summons by Xerxes to his advisors seeking their views (πυθέσθαι τῶν ἐπιπλεόντων τὰς γνώμας, 8.67.1) but also testing them (ἀποπειρώμενος ἑκάστου, 8.67.2) on the wisdom of engaging the Greeks in a sea battle at Salamis. The story highlights the reality of living with the rules of tyranny in that this sense of being 'put on trial' illustrates that this is a test of loyalty, not a request for advice; negotiating such occasions is a delicate matter for advisors on the Persian side.[612] Performances at court therefore require not only oratorical skill, but also managing the protocols of hierarchy, which may be more significant in practice than appearing manly. Robert Hariman has shown that, in a court setting, the king's power depends not only on using force and controlling the administrative apparatus effectively (the coercive *nomos* of tyranny) but also on a successful performance of kingship, within a 'structure of relationships constituted by symbolic acts'.[613] Both king and subject must play their part; there is a reciprocal process of display and response, with courtiers fighting to be heard and be seen. This is shown very clearly in the setting for Xerxes' debate:

> They sat according to the honour which the king had granted each of them, first the king of Sidon, then the king of Tyre, then the rest.
>
> ἵζοντο ὥς σφι βασιλεὺς ἑκάστῳ τιμὴν ἐδεδώκεε, πρῶτος μὲν ὁ Σιδώνιος βασιλεύς, μετὰ δὲ ὁ Τύριος, ἐπὶ δὲ ὦλλοι. (8.67.2)

[612] Pelling 1997: 57; 2000: 10-11.
[613] Hariman 1995: 219n.40.

A court identity, therefore, as much as a gender identity, depends on performance. Success as a courtier depends on performing one's role appropriately, being distinctive, placing oneself within the hierarchy as a way to establish authority, and manipulating tropes of (self) promotion, rivalry and self-preservation through interpreting information and motives, all skills which are shown by Artemisia.[614]

She is the only one of Xerxes' advisors to warn of defeat on land as well as sea if Xerxes runs the risk of a sea battle (ναυμαχίῃσι ἀνακινδυνεύειν, 8.68α2). In constructing a speech for her, Herodotus dramatises her attempt at persuasion.[615] The ability to speak well and to establish oratorical superiority over others, as well as physical dominance, had been a mark of the normative male from Homeric epic onwards, so it is no surprise that speech is an aspect of Artemisia's *andreia*.[616] Herodotus, therefore, gives Artemisia a speech which is full of persuasive rhetorical tropes.[617] She starts her speech with self-praise, a *captatio benevolentiae* intended to impress Xerxes with her qualifications: 'I did not play a negligible or cowardly role in the sea battles off Euboea' (οὔτε κακίστη γενομένη ἐν τῇσι ναυμαχίῃσι τῇσι πρὸς Εὐβοίῃ οὔτε ἐλάχιστα ἀποδεξαμένη, 8.68α1). She also signals her respect for his authority addressing him as master (δέσποτα). She then gives direct advice:

> Spare your ships, and do not fight at sea. Their men are as much stronger than your men by sea as men are stronger than women

[614] Hariman 1995: 64-76. Elias 1983: 79-91 on etiquette and hierarchies in the court society of Louis XIV, 'endlessly renewed by its competitive process'.
[615] Lang 1984: 20; Baragwanath 2008: 23; Fox and Livingstone 2007: 545.
[616] So Phoenix teaches Achilles to be a 'speaker of words and a doer of deeds' (μύθων τε ῥητῆρ' ἔμεναι πρηκτῆρά τε ἔργων, *Il*. 9.443).
[617] Bowie 2007: 157-8.

φείδεο τῶν νεῶν μηδὲ ναυμαχίην ποιέο. οἱ γὰρ ἄνδρες τῶν σῶν ἀνδρῶν κρέσσονες τοσοῦτο εἰσὶ κατὰ θάλασσαν ὅσον ἄνδρες γυναικῶν, 8.68α1

She reminds Xerxes, with a rhetorical question, that he has already taken Athens, his ostensible goal, and the rest of Greece (οὐκ ἔχεις μὲν τὰς Ἀθήνας ... ἔχεις δὲ τὴν ἄλλην Ἑλλάδα; 8.68.α2) so does not need to take the risk of a naval battle, and points out that the Greeks lack the resources to hold out for long.

The strategic part of her argument draws a contrast between what she predicts will happen if Xerxes avoids a sea battle and if he commits to one:

> I have learned that they have no food on this island, and it is not likely, if you lead your army against the Peloponnese, that those of them who have come from there will sit still, nor will they care to fight at sea for Athens ... If you engage in a sea battle straight away, I am afraid that the defeat of your fleet will also ruin your land army
>
> οὔτε γὰρ σῖτος πάρα σφι ἐν τῇ νήσῳ ταύτῃ, ὡς ἐγὼ πυνθάνομαι, οὔτε αὐτοὺς οἰκός, ἢν σὺ ἐπὶ τὴν Πελοπόννησον ἐλαύνῃς τὸν πεζὸν στρατόν, ἀτρεμιεῖν τοὺς ἐκεῖθεν αὐτῶν ἥκοντας, οὐδέ σφι μελήσει πρὸ τῶν Ἀθηνέων ναυμαχέειν ... ἢν δὲ αὐτίκα ἐπειχθῇς ναυμαχῆσαι, δειμαίνω μὴ ὁ ναυτικὸς στρατὸς κακωθεὶς τὸν πεζὸν προσδηλήσηται (8.68β2 ... γ1)

She is arguing here from probability, signalling the need to exercise judgment, to choose between two options. Artemisia concludes, however, by reverting to an argument based on the rhetoric of praise and blame, reminding Xerxes of the baseness and cowardice of others, in an attempt to establish her own superiority:

> Good people's slaves tend to be bad, and the slaves of the bad tend to be good. You, who are best among men, have bad slaves
>
> τοῖσι μὲν χρηστοῖσι τῶν ἀνθρώπων κακοὶ δοῦλοι φιλέουσι γίνεσθαι, τοῖσι δὲ κακοῖσι χρηστοί. σοὶ δὲ ἐόντι ἀρίστῳ ἀνδρῶν πάντων κακοὶ δοῦλοι εἰσί.

She emphasises the contrast between Xerxes, ἀρίστος ἀνδρῶν, and his enslaved allies, a contrast which also applies to her, since she fights freely, not under compulsion (οὐδεμιῆς οἱ ἐούσης ἀναγκαίης, 7.99.1). The antithesis is between free and slave as well as between men and women. Herodotus proves Artemisia's oratorical *andreia* by showing her in a verbal combat, and constructing for her a speech characterised by the antithesis of praise and blame. This makes a form of ring composition; she starts her speech with self-praise, to make Xerxes favourably inclined towards her and concludes by reminding him of the shortcomings of others. By attributing baseness and cowardice to others, she establishes her own superiority. This speech, therefore, illustrates what Roisman calls the 'rhetoric of *agōn*' in which there have to be winners and losers, and which finds expression also in the manipulation of courage and shame by Athenian orators who elevate self and denigrate others.[618] She speaks in terms of binary opposites, the adversarial creation of the 'other' in a successful rhetorical performance.

However, her speech also includes strategic advice, which requires Xerxes to exercise judgment between two options. She also does the remarkable thing of performing *isēgoriē* at the Persian court, that is, speaking like a man in Athenian terms. Herodotus shows that such speech is risky; all Xerxes' councillors, bar Artemisia, are coerced by the *nomos* of tyranny.

[618] Roisman 2007: 393-5; Rosen and Sluiter 2003: 8.

The response to Artemisia's performance by the internal audience, both her friends (εὔνοοι, 8.69.1) and her enemies, motivated by envy and resentment of her political influence (ἀγεόμενοί τε καὶ φθονέοντες, ἅτε ἐν πρώτοισι τετιμημένης διὰ πάντων τῶν συμμάχων, 8.69.1), makes it clear that everyone on the Persian side thinks Xerxes is committed to a sea battle and anticipate, therefore, that he will punish Artemisia (κακόν τι πεισομένης πρὸς βασιλέος, 8.69.1) or kill her (ἀπολεομένης αὐτῆς, 8.69.2) for voicing a different opinion. Perhaps they recall his fury (θυμωθεὶς, 7.11.1) in an earlier debate, when the rest of the Persians had kept quiet, not daring to voice an opposite opinion (σιωπώντων δὲ τῶν ἄλλων Περσέων καὶ οὐ τολμώντων γνώμην ἀποδείκνυσθαι ἀντίην τῇ προκειμένῃ, 7.10). Artabanus, however, urged caution before Xerxes launched his expedition against the Greeks and crossed the Hellespont. Xerxes was furious and said to him: 'for your craven cowardice I will humiliate you by not taking you with me on this expedition to Greece; instead you will stay here with the women' (καί τοι ταύτην τὴν ἀτιμίην προστίθημι ἐόντι κακῷ καὶ ἀθύμῳ, μήτε συστρατεύεσθαι ἔμοιγε ἐπὶ τὴν Ἑλλάδα αὐτοῦ τε μένειν ἅμα τῇσι γυναιξί, 7.11.1). As Boedeker notes, this rebuke makes the invasion of Greece a masculine pursuit; Artabanus is unmanned by being denied the opportunity to prove himself in battle.[619] The response of the internal audience to Artemisia's speech reveals that their primary concern is how Xerxes will react, not whether her strategic view is correct, and shows that Xerxes has canvassed their views as a test of loyalty, not in the spirit of joint decision-making.

Xerxes' response, however, is not anticipated; he is pleased with Artemisia's advice (κάρτα τε ἥσθη τῇ γνώμῃ, 8.69.2). Exactly the same phrase is used to describe Darius' reaction (4.97.6) to Coës' advice, before the king invaded Scythia, not to dismantle the bridge over the Ister

[619] Boedeker 2011: 219.

river but to keep it guarded as an escape route. Darius, however, is not only pleased with this advice, but follows it. Xerxes, by contrast, does not act on Artemisia's advice but gives orders that the advice of those in favour of a sea battle be followed (τοῖσι πλέοσι πείθεσθαι ἐκέλευε, 8.69.2). This is because he likes the polarities in Artemisia's speech (after all, he speaks them himself), and the way her speech is constructed in terms of opposites, but he does not heed the γνώμας ἀρίστας which is what Herodotus himself approves, nor does he come to a balanced judgment between two options.

Both the contemporary and the modern audience can appreciate the dramatic irony in Xerxes' failure to heed Artemisia's warning. This, suggests Lang, is its function, to prefigure Xerxes' defeat at Salamis.[620] Xerxes' response to the speech is part of Herodotus' characterisation of his motivation, a firm belief that his men fought badly on purpose at Euboea because he was not there (τάδε καταδόξας, πρὸς μὲν Εὐβοίῃ σφέας ἐθελοκακέειν ὡς οὐ παρεόντος αὐτοῦ, 8.69.2). He listens, therefore, to Artemisia's criticism of other allies, which, I have suggested, is a function of her agonistic *andreia*, but he ignores her accurate analysis of the Greek position and her subsequent advice, to avoid a sea battle and take advantage of Greek disunity. This is because he gives too much significance to his own contribution as king, thinking that his presence at Salamis will make them perform as men. His final action, before he gives the order to set sail, is to prepare himself to watch the battle (αὐτὸς παρεσκεύαστο θεήσασθαι ναυμαχέοντας, 8.69.2), a Persian defeat when many men die precisely because they want to be seen by him (8.86; 8.89.2).

[620] Lang 1984: 32.

Our response to Artemisia's speech is conditioned by the additional information that Herodotus gives about her and Xerxes' other allies. How do her claims for her own contribution and her criticism of others as expressed in her two proverbial statements and in particular the Egyptians, Cyprians, Cilicians and Pamphylians fit with Herodotus' narrative? At the battle of Artemisium, off the coast of Euboea, Herodotus has nothing to say about her role, whereas he marks out the Egyptians for their outstanding bravery (ἠρίστευσαν, 8.17). More generally, he also mentions Syennesis of Cilicia and Gorgus and Timonax, both of Cyprus, as amongst the most notable (ὀνομαστότατοι, 7.98) of Xerxes' naval commanders. Moreover, the joint contribution of the Egyptians, Cilicians, Cyprians and Pamphylians to the Persian fleet was 480 ships (7.89.2-7.91) as against Artemisia's five, though these are described by Herodotus as most famous (νέας εὐδοξοτάτας, 7.99.2), after the squadron from Sidon; her exploits were 'hardly sufficient to justify this extravagant praise'.[621]

Moreover, Herodotus does not attribute the losses off the coast of Euboea to Persian inferiority but to shipwreck, caused by a storm which happened by divine will (ἐποιέετο τε πᾶν ὑπὸ τοῦ θεοῦ, 8.13) to reduce the disparity between the size of the Persian and the Greek navies. He thus creates a distance between his version of events and that he gives to Artemisia, on this occasion through being silent about Artemisia's actions, giving us no evidence either way as to whether she showed *andreia*, but commending those men she condemned as cowards. This first speech, therefore, shows Artemisia as an accomplished orator, who manages to give sound strategic advice whilst also using the rhetoric of praise and blame, which is undercut by Herodotus' narrative on the battles of both Euboea and Salamis.

[621] Macan 1908: 126.

Some bravery was involved in her making the speech but she is also shown as someone capable of misrepresenting the truth for rhetorical advantage.

Xerxes, however, is coerced by *nomos* himself; he is obliged as king of Persia, to wage constant war. He makes this point explicit when he first declares his intention to attack Greece and achieve world domination:

> Men of Persia, I am introducing no new rule here; I am simply drawing on traditional Persian ways ... there has never been a time when we have not been at war, ever since Cyrus deposed Astyages and we took over from the Medes
>
> ἄνδρες Πέρσαι, οὔτ᾽ αὐτὸς κατηγήσομαι νόμον τόνδε ἐν ὑμῖν τιθείς, παραδεξάμενός τε αὐτῷ χρήσομαι. ὡς γὰρ ἐγὼ πυνθάνομαι τῶν πρεσβυτέρων, οὐδαμά κω ἠτρεμίσαμεν, ἐπείτε παρελάβομεν τὴν ἡγεμονίην τήνδε παρὰ Μήδων, Κύρου κατελόντος Ἀστυάγεα (7.8α)

> I learn that this is the situation: no city of men or any human nation which is able to meet us in battle will be left, if those of whom I speak are taken out of our way. Thus the guilty and the innocent will alike bear the yoke of slavery.
>
> πυνθάνομαι γὰρ ὧδε ἔχειν, οὔτε τινὰ πόλιν ἀνδρῶν οὐδεμίαν οὔτε ἔθνος οὐδὲν ἀνθρώπων ὑπολείπεσθαι, τὸ ἡμῖν οἷόν τε ἔσται ἐλθεῖν ἐς μάχην, τούτων τῶν κατέλεξα ὑπεξαραιρημένων. οὕτω οἵ τε ἡμῖν αἴτιοι ἕξουσι δούλιον ζυγὸν οἵ τε ἀναίτιοι. (7.8γ3)

Xerxes is portrayed as a man who seeks to cross the boundary between Asia and Europe and then obliterate all boundaries by creating an world-wide empire, thus personifying *hubris*, by violating the boundary between men and gods.[622] However, he is also subject to pressure to emulate his predecessors and does not discriminate between the innocent and the guilty.[623]

His response to Artemisia's speech shows him to be a man who lacks judgment. He enjoys Artemisia's display of her competitive *andreia*, and listens to her caustic criticism of his other allies but discounts her accurate analysis of the Greek position and ignores her advice, to avoid a sea battle and take advantage of Greek disunity. Xerxes, therefore, proves to be constrained by the *nomos* of Persian imperialism, which compels him to reject Artemisia's advice.[624] She, however, is the only one of the king's allies who is not constrained by fear, and speaks freely, like the normative Athenian male.

4.2 Second speech of Artemisia

The second occasion when Artemisia gives advice to Xerxes is after the defeat at Salamis. On this occasion, he recognises that she had been the only person with a strategy (ἐφαίνετο μούνη νοέουσα τὰ ποιητέα ἦν, 8.101.1) and had given good advice (εὖ συνεβούλευσας, 8.101.4), and asks for her advice on her own, dismissing (μεταστησάμενος, 8.101.2) his councillors and guards. On this occasion, therefore, Xerxes is the sole internal audience and judge of her performance. He puts to her the two options proposed by Mardonius, that is either for him to launch an immediate attack on the Peloponnese (8.100.3) or to allow Mardonius to wage war on his behalf.

[622] Asheri 2007: 38.
[623] Baragwanath 2008: 243-246; Bowie 2007: 8-11.
[624] Munson 1988: 95-96. Chiasson 2003: 31.

Artemisia says it is difficult to know what is best to say (χαλεπὸν μέν ἐστι συμβουλευομένῳ τυχεῖν τὰ ἄριστα εἴπασαν, 8.102.1), a form of self-deprecation which is itself a rhetorical strategy and is disingenuous.[625] Her speech reveals that there is no real argument to be had. She devotes no time at all to Mardonius' first proposal. She commends the second as being advantageous to Xerxes whether Mardonius succeeds or not. If Mardonius succeeds, the achievement will belong to Xerxes, because his slaves were victorious (σὸν τὸ ἔργον γίνεται; οἱ γὰρ σοὶ δοῦλοι κατεργάσαντο, 8.102.2); the repetition of σὸν ... σοὶ emphasises his ownership of the victory. If he fails, Xerxes and his family will still survive, and the Greeks will have to 'run for their lives, over and over again' (ἢν γὰρ σύ τε περιῇς καὶ οἶκος ὁ σός, πολλοὺς πολλάκις ἀγῶνας δραμέονται περὶ σφέων αὐτῶν οἱ Ἕλληνες, 8.102.3). This is clever oratory on Artemisia's part; she gives Xerxes a way to save face. Though he is the one about to flee, she suggests it will be the Greeks who will be running away in the longer term. It is significant, I think, that Xerxes is the only addressee, since what she proposes does not fit Xerxes' model of kingship which relies on his presence. Moreover, her arguments could not safely be put to a wider audience.

This second speech, therefore, is constructed less as an attempt to persuade, and more as an accurate reading of Xerxes' mind and intentions, which Herodotus makes explicit as narrator: 'I think he was so frightened that he would not have stayed even if every man and woman had told him to' (οὐδὲ γὰρ εἰ πάντες καὶ πᾶσαι συνεβούλευον αὐτῷ μένειν, ἔμενε ἂν δοκέειν ἐμοί: οὕτω καταρρωδήκεε, 8.103). On this occasion, he presents Artemisia as voicing a pragmatic solution and acting as the 'consummate courtier' who protects herself, since it is safer to

[625] Hesk 2000: 202-230; Zali 2015: 28 on the rhetoric of anti-rhetoric, claiming not to be using rhetorical tropes.

advise retreat, than find herself in Mardonius' position, if things go wrong for the Persians.[626] Artemisia succeeds as a courtier because she performs appropriately as a speaker, she establishes a distinctive position at court proving to be the only person with a strategy, she protects her authority within the court hierarchy, whilst acknowledging Xerxes' power, and she manages to promote herself and criticise her rivals at court, ensuring her own self-preservation.[627]

However, her speech also has a proleptic purpose, in making a significant prediction. Perhaps it was a 'vast mistake' to let the king escape. [628] Certainly the Athenians were incensed when they found out (μάλιστα ἐκπεφευγότων περιημέκτεον, 8.109.1) and it took a 'disingenuous speech' (ταῦτα λέγων διέβαλλε, 8.110.1) by Themistocles to convince them not to pursue the king.[629] Baragwanath points out that διαβάλλειν means both 'to deceive' and 'to hide one's intentions' but argues that the Athenians were ready to be persuaded (πάντως ἕτοιμοι ἦσαν λέγοντι πείθεσθαι, 8.110.1).[630] This suggests a parallel with Artemisia and Xerxes. Her advice pleases the king because it confirmed his own intentions (λέγουσα γὰρ ἐπετύγχανε τά περ αὐτὸς ἐνόεε, 8.103). Moreover, just as I noted Artemisia being commended for her good advice by Xerxes, so Themistocles is judged by the Athenians to be both clever and a good advisor (σοφός τε καὶ εὔβουλος, 8.110.1). However, his true motivation in urging the Greeks to stay in Greece, according to Herodotus, was to gain favour (ἀποθήκην μέλλων ποιήσεσθαι, 8.109.5) with Xerxes.[631] Like Artemisia, he is skilled at strategy but capable of treachery and

[626] Bowie 2007: 191.
[627] Zali 2015: 114.
[628] Macan 1908: 518.
[629] Waterfield's translation of διαβάλλειν.
[630] Baragwanath 2008: 310.
[631] Baragwanath 2008: 290 - this narratorial intervention is a sharp contrast to the 'noble rhetoric' of Themistocles' speech.

betrayal. Baragwanath calls Themistocles a 'man of *mētis*'[632] for whom self-interest is paramount. The same could be said of Artemisia. Her speech, like her actions at Salamis, shows political and ethical expedience, not heroic valour, qualities which are part of the *andreia* which Herodotus attributes to her. [633]

To summarise, Artemisia shows skill in 'playing with the rules'. Even in defeat she can manage the relationship with Xerxes to her advantage. Herodotus shows this through making her a skilful speaker, who can 'read' Xerxes effectively, but whose excellent advice (γνώμας ἀρίστας, 7.99.3) is disregarded, making this a judgment by Herodotus on Xerxes, not on her.

4.3 Themistocles' first speech: a comparison

In constructing Artemisia's first speech, Herodotus shows her contending with the royal *nomos* of aggression, which compel Xerxes (7.8: 7.12-18) and his father before him (3.134) to extend the Persian Empire. It was always going to be difficult to persuade him to refrain from battle. However, she accurately diagnoses the Greeks' problem: Greek disunity, fear of the invader and a desire to retreat in the face of the overwhelming superiority of the Persian forces.[634] As the Persians progress through Greece, some states medise (7.132; 7.138), some do not (7.178.2) and Herodotus' narrative gives a detailed account of the dilemmas and disagreements between Greek states, in the face of Xerxes' invasion. The Greek league against the Persians sent delegations to Argos (7.148-52), Sicily (7.157-63) and Corcyra (7.168) to try to persuade them not to remain neutral or to become allies of Persia.

[632] Baragwanath 2008: 317.
[633] Bassi 2003: 41n.48.
[634] Blösel 2001: 184; Baragwanath 2008: 293-4.

Herodotus also notes that fear is often the decisive factor in determining whether states fight or retreat. For example, when the Greek forces decide to retreat from Tempe in Thessaly, on the advice of Alexander of Macedon, he observes, as narrator, the persuasive effect of fear (δοκέειν δέ μοι, ἀρρωδίη ἦν τὸ πεῖθον, 7.173.4).[635] However, whereas Artemisia flatters Xerxes, Themistocles makes his praise of Eurybiades conditional. It is within his power to save Greece (Ἐν σοὶ νῦν ἐστι σῶσαι τὴν Ἑλλάδα, 8.60α) but only if he takes his advice to stay put and fight rather than withdraw to the Isthmus, as the other Greeks at Salamis had already decided to do.

Both Themistocles and Artemisia, however, are speaking against the majority view. Artemisia skilfully avoids attributing any blame to Xerxes for past defeats. Themistocles, too, is aware of the danger of inflaming Greek disunity by repeating Mnesiphilus' view (8.57) that the allies would disperse if they retreated from Salamis, and he omits it from his speech. He recognises that 'it would not bring him any advantage to make accusations' (οὐκ ἔφερέ οἱ κόσμον οὐδένα κατηγορέειν, 8.60); to adopt the legal parallel, he decides an adversarial approach is not appropriate. This focalisation reveals his awareness of the fragility of the Greek alliance but also his self-interest which mirrors Artemisia's comments on the uselessness of the Persian allies. The external audience, however, will recall Mnesiphilus' warning, which is predicted by Artemisia in her first speech.

Both comment on the inferiority of their own side's forces. Artemisia's remarks about the Persian navy find an echo in Themistocles' observation that the Greeks are at a clear disadvantage ([ἐς] τὸ ἥκιστα ἡμῖν συμφορόν ἐστι, 8.60α) in a sea battle in open water,

[635] Other examples of fear as a motivating factor are 7.183.1; 7.207; 8.4.2; 8.56 and the desire to retreat 7.219.2; 8.18; 8.49; 8.74.

because their ships are heavier than the Persian ships and the Persians have a larger fleet. Both speeches are also characterised by pragmatism and evaluation of risk. Artemisia reminds Xerxes that he has already taken Athens, his ostensible goal, so why take the risk of a naval battle? Themistocles tells his audience that they run the risk of inviting the Persians into the Peloponnese and putting the whole of Greece in danger (σφέας αὐτὸς ἄξεις ἐπὶ τὴν Πελοπόννησον, κινδυνεύσεις τε ἁπάσῃ τῇ Ἑλλάδι, 8.60α) if they retreat to the Isthmus, and will lose Salamis, Megara and Aegina in any event (8.60α). In putting the case for the alternative option, he argues from probability that the Greeks, if they fight in the narrow straits, will prevail, if the battle goes as they might reasonably expect (ἢν τὰ οἰκότα ἐκ τοῦ πολέμου ἐκβαίνῃ, πολλὸν κρατήσομεν, 8.60β). Unlike Artemisia, however, he does not consider the possibility of defeat at Salamis but uses an emotional appeal to argue for its survival as the place where 'we have placed our women and children' (ἐς τὴν ἡμῖν ὑπέκκειται τέκνα τε καὶ γυναῖκες, 8.60β). This is a sleight of hand; he is speaking to the Greeks but it is the Athenians who have had to take refuge at Salamis. However, this makes it a persuasive argument for his Athenian audience.

Artemisia uses a proverb that good men have bad slaves and vice versa. Themistocles concludes his speech contrasting those who make reasonable plans and those who do not (οἰκότα μέν νυν βουλευομένοισι … μὴ δὲ οἰκότα βουλευομένοισι, 8.60γ), echoing Mnesiphilus' advice in which he emphasises the importance of debate (ἀβουλιῃσι ... τὰ βεβουλευμένα ... μεταβουλεύσασθαι, 8.57.2) and Artabanus' similar words to Xerxes, that a well-laid plan brings the most advantage (τὸ γὰρ εὖ βουλεύεσθαι κέρδος μέγιστον εὑρίσκω ἐόν, 7.10δ2).[636] However, Artabanus is characterised as a cautious person, a foil to Xerxes.

[636] De Bakker 2007: 109n.54, 111n.66.

Themistocles, by contrast, is characterised as impatient, as the exchange with Adeimantus before his speech makes clear, when Themistocles does not wait for Eurybiades to arrive: 'In the games, those who start before the signal is given, get flogged' (ἐν τοῖσι ἀγῶσι οἱ προεξανιστάμενοι ῥαπίζονται, 8.59) says Adeimantus, to which Themistocles replies 'Those who get left behind, win no prizes' (Οἱ δέ γε ἐγκαταλειπόμενοι οὐ στεφανοῦνται, 8.59). There is irony in Themistocles advising counsel, just as there is in Artemisia following praise of her exploits with a generalisation about female inferiority, which suggests that both characters are skilled at making speeches that are appropriate for the situation.

Both Artemisia's and Themistocles' first speeches, therefore, dramatise an attempt at arguing against the prevailing view. The reaction to those speeches, however, is very different. Whereas Xerxes is pleased with Artemisia's speech but does not take her advice, Themistocles faces immediate opposition from Adeimantus, who questions his right to speak, as Athens has fallen to the Persians making Themistocles a 'man without a city' (ἀπόλι ἀνδρί, 8.61.1). He responds by abusing both Adeimantus and the Corinthians generally (πολλά τε καὶ κακὰ ἔλεγε, 8.61.2) and speaking in a more forthright way to Eurybiades. He threatens to withdraw the Athenian troops if he does not stay to fight. His rhetoric hardens; he speaks more vehemently (μᾶλλον ἐπεστραμμένα, 8.62.1) and puts the alternatives in stark form; either Eurybiabes can be a brave man (ἀνὴρ ἀγαθός, 8.62.1) or he can bring ruin to Greece. The debate is adversarial, described by Herodotus, using a military metaphor, as a verbal skirmish (ἔπεσι ἀκροβολισάμενοι, 8.64.1), echoing the verbal jostling between the Greek commanders at Salamis (ὠθισμὸς λόγων πολλός, 8.78). Herodotus, as narrator, expresses the viewpoint that fear was the motivating factor in Eurybiades' decision to stay:

> When Themistocles said this, Eurybiades changed his mind. I think he did so chiefly out of fear that the Athenians might desert them if they set sail for the Isthmus.
>
> ταῦτα δὲ Θεμιστοκλέος λέγοντος ἀνεδιδάσκετο Εὐρυβιάδης: δοκέειν δέ μοι, ἀρρωδήσας μάλιστα τοὺς Ἀθηναίους ἀνεδιδάσκετο, μή σφεας ἀπολίπωσι, ἢν πρὸς τὸν Ἰσθμὸν ἀγάγῃ τὰς νέας (8.63)

This earlier speech also illustrates the power imbalance between Athens and Corinth. When Adeimantus threatens to withdraw his troops before the battle of Artemisium, a bribe from Themistocles is enough to persuade him not to do so (8.5.2), but withdrawal of the 200 Athenian ships before Salamis would have left the rest of the Greeks no match (οὐκέτι ἐγίνοντο ἀξιόμαχοι οἱ λοιποί, 8.63) for the enemy. As Munson notes, Themistocles is 'executive rather than advisor' whereas Artemisia is isolated and powerless.[637] This use of threats foreshadows later use of force and compulsion by Themistocles, and his changing character traits, from heroism before Salamis, to self-interest and hubristic tendencies after.[638]

Bakker suggests that the two speeches of Themistocles, a 'clever blend of strategic argument and a naked threat', together keep the fleet at Salamis long enough to prevent the fragmentation he feared and Artemisia predicted. [639] They also illustrate both a contrast with the Persian court where Artemisia is the only person to practice *isēgoriē*, but also the reality that power rests with Athens, just as it does with Xerxes on the Persian side. Themistocles has to establish his authority in a male hierarchy, hostile to his opinion, and he wins in the end through a deceptive act.

[637] Munson 1988: 98.
[638] Blösel 2001: 195-6.
[639] De Bakker 2007: 113.

5. Battle of Salamis: Artemisia in battle

Artemisia's motive of self-interest becomes apparent also in her actions in battle.[640] During the battle of Salamis, Artemisia is being pursued by an Athenian ship, whose skipper has been offered a substantial reward for her capture, because of the Athenians' anger at being attacked by her. The Athenians' hostility to a woman attacking Athens has echoes of the Amazon myth; they are the only group, however, shown to foreground Artemisia's gender. Her skill in battle consists of deceiving both Greeks and Persians, by sinking one of her own ships. The Athenian captain assumes that Artemisia's ship was either Greek or was a defector from the Persians fighting on his side, so he changed course and turned to attack other ships (8.87). Xerxes' men recognise her insignia and draw the king's attention to her performance in the battle, which they interpret as her sinking an enemy ship (8.88). As none of the crew of the ship sunk by Artemisia survive, there is no-one to correct their assumption. The king's explanation for the defeat at Salamis is 'My men have turned into women and my women into men!' ('οἱ μὲν ἄνδρες γεγόνασί μοι γυναῖκες, αἱ δὲ γυναῖκες ἄνδρες', 8.88). He attributes *andreia* to Artemisia for her actions in battle, as he contrasts her conduct with that of his men, whom he perceives as cowards.

However, Herodotus' narratorial judgment on Artemisia's performance is less positive: 'although she did a bad deed, her actions made Xerxes particularly pleased with her' (τοῦτο δὲ συνέβη ὥστε κακὸν ἐργασαμένην ἀπὸ τούτων αὐτὴν μάλιστα εὐδοκιμῆσαι παρὰ Ξέρξῃ, 8.88.1). Herodotus attributes her success to her double good fortune (εὐτυχίῃ χρησαμένη διπλᾶ ἑωυτὴν ἀγαθὰ ἐργάσατο, 8.87.4) not to courage, and shows that he, unlike the Greeks

[640] Munson 1988: 101; Boedeker 2011: 219; Sebillote Cuchet 2015: 242.

and the Persians, is not deceived by Artemisia. Moreover, Herodotus does not attribute defeat to cowardice on the part of the Persian force, as he declares:

> They displayed and acted with far more courage that day than they had off Euboea: every single one of them fought with determination, spurred on by his fear of Xerxes, and each of them imagined that the king's eyes were on him
>
> καίτοι ἦσάν γε καὶ ἐγένοντο ταύτην τὴν ἡμέρην μακρῷ ἀμείνονες αὐτοὶ ἑωυτῶν ἢ πρὸς Εὐβοίῃ, πᾶς τις προθυμεόμενος καὶ δειμαίνων Ξέρξην, ἐδόκεέ τε ἕκαστος ἑωυτὸν θεήσασθαι βασιλέα. (8.86).

Xerxes' words to Demaratus, before the battle of Thermopylae, are proved to be true: his men do excel themselves through fear of their one leader (ὑπὸ μὲν γὰρ ἑνὸς ἀρχόμενοι κατὰ τρόπον τὸν ἡμέτερον γενοίατ᾽ ἄν, δειμαίνοντες τοῦτον, 7.103.4) but the larger Persian fleet is at a disadvantage in the narrow straits of Salamis and it was precisely because crews were trying to impress Xerxes with their bravery, 'to show the king that they too could perform well' (ὡς ἀποδεξόμενοί τι καὶ αὐτοὶ ἔργον βασιλέι, 8.89.2) that many perished, because they fell into the path of retreating Persian ships. Herodotus thereby undercuts the stereotype of the Persian as weak, effeminate and servile.[641]

Artemisia clearly shows tactical skill in deceiving both Greeks and Persians and avoiding capture but Herodotus shows that her claim to be superior to Xerxes' other allies is not justified by her actions, if *andreia* is bravery in battle. This paradoxical situation makes us question the very meaning of *andreia*, if it can be displayed through 'escape and survive' rather than 'win or die', the Spartans' all-powerful *nomos* (7.104). Thus, it is argued,

[641] Raaflaub 2011: 20.

Herodotus links himself much more closely to contemporary sophistic debate in which the weaker becomes the stronger, than to Homeric or Spartan models of manly valour.[642]

However, I do not think that Herodotus takes such a polarised position in portraying Artemisia in this way; rather, he highlights ambiguities in her character which could equally be found in a man. His own judgment of her performance is that he commends her for giving excellent advice, he condemns her for her self-serving actions during battle. Her characterisation, therefore, is complex and nuanced. Her capacity for deception, moreover, is not gender specific, in that she is similar to Themistocles in her 'trickster' side.[643] In Themistocles' case, this is before the battle. Once the Persians arrived at Salamis, fear once again took hold of some of the Greeks (ἀρρώδεον, 8.74.1) when they learned that the Greeks at the Isthmus were building a defensive wall, and they began to question Eurybiades' judgment (θῶμα ποιεύμενοι τὴν Εὐρυβιάδεω ἀβουλίην, 8.74.2). Realising that he was being defeated in the argument (ἐσσοῦτο τῇ γνώμῃ, 8.75.1) by the Peloponnesians, Themistocles arranged for his slave Sicinnus to take a message secretly to Xerxes saying that the Greeks were in a state of panic and planning to run away (δρησμὸν βουλεύονται καταρρωδηκότες, 8.75.2). This tricks the Persians into making preparations for an immediate attack and forces the Greeks to stay put and fight, because they have been surrounded in the night by the Persian fleet. However, at the battle of Salamis, Herodotus notes that, though Themistocles advised the same group once again to fight badly, in practice few did (ἐθελοκάκεον μέντοι αὐτῶν κατὰ τὰς Θεμιστοκλέος ἐντολὰς ὀλίγοι, οἱ δὲ πλεῦνες οὔ, 8.85.1).

[642] Munson 1988: 103-4.
[643] Munson 1988: 104.

Most commentators leave the story of Artemisia after the battle of Salamis, and her second speech to Xerxes, or dismiss the concluding section with a dismissive aside. Romm for example, describes it as 'the Amazon warrior returning from battle to become the royal nanny'.[644] However, I think the conclusion to the story is very significant in that it signposts complex gender identities which test gender binaries:

> Having praised Artemisia, he sent her off to take the illegitimate children, who had come on the expedition with him, to Ephesus; he sent with her his most trusted eunuch, Hermotimus, to act as guardian ... who exacted the greatest retribution we know of, for a crime committed against him
>
> ἐπαινέσας δὲ τὴν Ἀρτεμισίην, ταύτην μὲν ἀποστέλλει ἄγουσαν αὐτοῦ παῖδας ἐς Ἔφεσον: νόθοι γὰρ τινὲς παῖδές οἱ συνέσποντο. συνέπεμπε δὲ τοῖσι παισὶ φύλακον Ἑρμότιμον, γένος μὲν ἐόντα Πηδασέα, φερόμενον δὲ οὐ τὰ δεύτερα τῶν εὐνούχων παρὰ βασιλέι ... τῷ μεγίστη τίσις ἤδη ἀδικηθέντι ἐγένετο πάντων τῶν ἡμεῖς ἴδμεν (8.103-5)

This story has been analysed mostly for its link to the story of Hermotimus' revenge on Panionius. Hermotimus, who achieved high status in Persia as a favoured eunuch destroys all the males in the Chian family of Panionius, illustrating the reciprocal process of vengeance, with which the *Histories* start, the theme of east-west and Greek-Persian reciprocal action responding to unjust acts.[645] Hornblower reads the story as a 'signifier' for the Chian disaster of 494 BCE when, as a reprisal for the Ionian revolt, the Persians castrated the Chian boys and

[644] Romm 1998: 172.
[645] Braund 1998: 166-7.

deported the girls. Xerxes' defeat is reciprocal justice for this atrocity.[646] He highlights the liminal significance of place in the story, which happens on the borders on the eastern Aegean, where early Greek settlers, local non-Greeks, such as the Carians (whose female resistance I analysed in chapter 1), and the invading Persians 'coexist uneasily' and where cultural conflict about *nomoi* is to be expected.[647]

I think Herodotus also intends to highlight the fluid nature of gender boundaries in this passage. Artemisia to this point has been shown as remarkable principally because she performs a masculine role in speech and actions. Here she reverts to a more normative role as a carer for royal children, who themselves have a liminal status as the children of *pallakai*, in the company of a man who is physically not a man, but who paradoxically achieves status as a non-man at the Persian court, enabling him to take his revenge on Panionius. Moreover he comes from Pedasa, the place where the priestess of Athena grew a long beard (ἡ ἰρείη τῆς Ἀθηναίης πώγωνα μέγαν ἴσχε, 1.175) when disaster threatened, a woman like Artemisia, therefore, who can move between genders.[648] She can perform both a masculine and a feminine role, as can Hermotimus, someone capable of destroying a family but also of taking a protective role of the king's children. This pendant, therefore, is a significant reminder that gender signifiers, as well as ethnic or cultural signifiers, are unstable and characters who are gender-fluid invite us to interrogate gender boundaries. In my next case study, gender roles are not so much fluid, as reversed, in that the woman performs as a normative male, the man is unable to do so.

[646] Hornblower 2003: 40-1, 55; Bowie 2007: 193.
[647] Hornblower 2003: 48-57.
[648] The passage is also included at 8.104 in square brackets in the Hude edition but, according to Bowie 2007: 194 most editors excise it.

6. Tomyris

Cyrus' enthusiasm to engage in battle with the Massagetae (προθυμίην στρατεύσασθαι, 1.204.1) was influenced by two main factors, according to Herodotus; his birth, which seemed more than mortal (ἡ γένεσις, τὸ δοκέειν πλέον τι εἶναι ἀνθρώπου, 1.204.2) and his good fortune in war (ἡ εὐτυχίη ἡ κατὰ τοὺς πολέμους γενομένη, 1.204.2) which made him invincible. Asheri suggests that Herodotus is signalling Cyrus' *hubris*, born of overconfidence, and preparing the reader for the reversal of fortune.[649] I will argue that whilst the opposition of mortal and immortal rather than male and female is certainly an important aspect of this story, there is also a strong gender element in that Cyrus is shown to have changed as a character, from being the most manly of his contemporaries as a young man, and someone who rejected stories of his divine birth, as I showed in chapter 4, to being a king who cannot perform a masculine role in war and is defeated because he ignores good advice, preferring to heed the ideology of female inferiority, and, as a consequence, underestimating female capacity in war.

Cyrus initially tries to trick the queen with a marriage proposal, foregrounding her gender:

> However, Tomyris realized that it was not her he desired so much as the Massagetan kingdom, so she rejected his advances. Since Cyrus had got nowhere by trickery, he next marched to the Araxes and started to wage open war against the Massagetae.
>
> ἡ δὲ Τόμυρις συνιεῖσα οὐκ αὐτήν μιν μνώμενον ἀλλὰ τὴν Μασαγετέων βασιληίην, ἀπείπατο τὴν πρόσοδον. Κῦρος δὲ μετὰ τοῦτο, ὥς οἱ δόλῳ οὐ προεχώρεε, ἐλάσας ἐπὶ τὸν Ἀράξεα ἐποιέετο ἐκ τοῦ ἐμφανέος ἐπὶ τοὺς Μασσαγέτας στρατηίην. (1.205.1-2)

[649] Asheri 2007: 214.

Like Artemisia, Tomyris shows an ability to 'read' a Persian king; she rejects Cyrus' proposal of marriage because she knows he makes it to gain power for himself. By focalising this event from Tomyris' perspective, Herodotus shows the queen's discernment and foreshadows Cyrus' later trickery. When she sees him prepare for war, she sends a message:

> King of the Medes, give up this hasty enterprise. You cannot know if in the end it will come out right for you. Stop and rule your own people, and put up with the sight of me ruling mine. But no: you are hardly going to take this advice, since peace is the last thing you desire
>
> ὦ βασιλεῦ Μήδων, παῦσαι σπεύδων τὰ σπεύδεις: οὐ γὰρ ἂν εἰδείης εἴ τοι ἐς καιρὸν ἔσται ταῦτα τελεόμενα: παυσάμενος δὲ βασίλευε τῶν σεωυτοῦ, καὶ ἡμέας ἀνέχευ ὁρέων ἄρχοντας τῶν περ ἄρχομεν. οὔκων ἐθελήσεις ὑποθήκῃσι τῇσιδε χρᾶσθαι, ἀλλὰ πάντως μᾶλλον ἢ δι᾽ ἡσυχίης εἶναι. (1.206.1-2)

Her use of the imperative shows an assertive character who takes the initiative.[650] Dickey reads Tomyris' form of address, ὦ βασιλεῦ Μήδων, as indicating her hostility to Cyrus and comparing it with the two other occasions when this form of address is used, namely when the two Spartiates present themselves to Xerxes to pay the penalty for the death of Darius' heralds at the hands of the Spartans (7.136.2) and the Spartan herald's demand for compensation for the death of Leonidas (8.144.2), also addressed to Xerxes. She argues that, as a form of address it is 'not entirely courteous ... and embedded in demands and threats' whereas βασιλεῦ is used in contexts where respect is shown.[651] Certainly this is suggested by the use of βασιλεῦ by Atossa (3.134.1) and Intaphrenes' wife (3.119.5), both to Darius. However,

[650] Hazewindus 2004: 152-162; 165-179.
[651] Dickey 1996: 95.

does Herodotus intend to convey hostile intent on the part of this speaker? The examples of Atossa and Intaphrenes' wife show the individuals in a relationship, of wife and of suppliant respectively, where the form of address is calculated to persuade and influence. What is striking about the three instances of ὦ βασιλεῦ Μήδων is not necessarily hostile intent but certainly no intention to foster a relationship. That is how I read Tomyris' address to Cyrus; she is courteous but direct in rejecting future engagements with him, and I think Herodotus shows through speech how her hostility to Cyrus increases, culminating in her extremely hostile address to his corpse at the end of the story.

In advising Cyrus to avoid a battle with the Massagetae she mirrors Artemisia's advice to Xerxes, to avoid fighting the Greeks at sea. Unlike Artemisia, however, she is not eager for war but seeks to maintain her territorial integrity. Her desire for peace echoes Croesus' words to Cyrus, that 'no-one is mad enough to prefer war to peace, for in peace men bury their fathers, in war fathers bury their sons' (οὐδεὶς γὰρ οὕτω ἀνόητος ἐστὶ ὅστις πόλεμον πρὸ εἰρήνης αἱρέεται: ἐν μὲν γὰρ τῇ οἱ παῖδες τοὺς πατέρας θάπτουσι, ἐν δὲ τῷ οἱ πατέρες τοὺς παῖδας, 1.87.4) but she also speaks like Solon, who warns Croesus to look at outcomes and endings (1.32.9).

Croesus is shown to have learnt this lesson from Solon and corrects Cyrus' view that he will inevitably win, saying that the wheel of fortune 'does not allow the same man to prosper for ever' (οὐκ ἐᾷ αἰεὶ τοὺς αὐτοὺς εὐτυχέειν, 1.207.2). However, he is less reliable as a military strategist, advising Cyrus to cross into Massagetan territory, and telling the king 'it would be intolerably shameful for Cyrus the son of Cambyses to withdraw and give ground to a woman' (αἰσχρὸν καὶ οὐκ ἀνασχετὸν Κῦρόν γε τὸν Καμβύσεω γυναικὶ εἴξαντα ὑποχωρῆσαι

τῆς χώρης, 1.207.5), thus playing to Cyrus' belief in female inferiority. However, victory over the Massagetae is not achieved through a great performance on the battle field but through deception, leading Tomyris to accuse Cyrus of overcoming her son through the trick of intoxication, rather than through strength in battle (τοιούτῳ φαρμάκῳ δολώσας ἐκράτησας παιδὸς τοῦ ἐμοῦ, ἀλλ᾽ οὐ μάχῃ κατὰ τὸ καρτερόν, 1.212.2). By contrasting Cyrus' trickery with masculine warrior courage, Tomyris condemns Cyrus' performance not only as king and military leader, but also as a man. Her rhetoric has hardened; βασιλεῦ Μήδων has become 'bloodthirsty Cyrus' (ἄπληστε αἵματος Κῦρε, 1.212.1) and this time there is a warning, emphasised with an oath, that she will sate even his thirst for blood (ἥλιον ἐπόμνυμί τοι τὸν Μασσαγετέων δεσπότην, ἢ μέν σε ἐγὼ καὶ ἄπληστον ἐόντα αἵματος κορέσω, 1.212.3), a threat she makes good after the battle.

In this story, the threat to her son is given as the motivating factor for war, thus foregrounding Tomyris' role as a mother, in contrast to Artemisia.[652] Moreover, Herodotus does not show her glorying in victory. When the battle is over, and she pushes Cyrus' severed head into a wineskin she addresses him: 'although I have come through the battle alive and victorious, you have destroyed me by capturing my son with a trick' (σὺ μὲν ἐμὲ ζῶσάν τε καὶ νικῶσάν σε μάχῃ ἀπώλεσας, παῖδα τὸν ἐμὸν ἐλὼν δόλῳ, 1.214.5); there is none of the rhetoric of self-praise that I identified in Artemisia's speech. To that extent, her conduct does not mirror that of a normative male, victorious in battle, though her military victory is itself a masculine feat.

Thus, Herodotus shows her as a high-status woman exercising military power successfully and speaking honestly and openly. In this way, she acts more like the normative male than

[652] Iriate 2013: 107; Chiasson 2012: 230; Boedeker 2011: 214.

Cyrus, who uses a trick, rather than military force, to oppose her. He is also shown to ignore the two Persian rules of showing bravery in battle and honesty (τὸ μάχεσθαι εἶναι ἀγαθόν ... ἀληθίζεσθαι, 1.136.1-2) thereby losing the *andreia* attributed to him as a young man (1.123). He makes a strategic mistake in listening to Croesus' gender prejudices as well as ignoring Tomyris' warnings, and he fails to live up to masculine norms that require victory in battle and straightforward speech. However, he also ignores Croesus' reminder of human mortality and the mutable nature of good fortune, and so, like Xerxes, he is shown by Herodotus to ignore human limitations, the boundary between mortal and immortal, which is another significant polarity in this story as well as that between male and female.[653] As I have already argued with respect to other characters, the rule of law includes divine rules which limit human ambition and punish those who invite the *phthonos* of the god. This is made very clear by Herodotus in the story of Pheretime, who goes too far in avenging her son's death.

7. Pheretime

Pheretime is different from Artemisia and Tomyris in that she does not exercise military power as of right, indeed she is shown to resist the constitutional change brought about by the mediation of Demonax, which has introduced a new rule of law limiting the powers of kingship. She petitions Euelthon for an army:

> Pheretime came to him, asking him for an army to bring her and her son back to Cyrene; Euelthon was willing to give her everything else, only not an army, and when she accepted what he gave her, she said that it was fine, but it would be better to give her an army as she asked. This she said whatever the gift, until at last Euelthon sent

[653] Asheri 2007: 38-9.

her a golden spindle and distaff, and wool, and when Pheretime uttered the same words as before, he answered that these, and not armies, were gifts for women.

ἡ Φερετίμη ἐδέετο στρατιῆς ἢ κατάξει σφέας ἐς τὴν Κυρήνην. ὁ δὲ Εὐέλθων πᾶν μᾶλλον ἢ στρατιήν οἱ ἐδίδου: ἢ δὲ λαμβάνουσα τὸ διδόμενον καλὸν μὲν ἔφη καὶ τοῦτο εἶναι, κάλλιον δὲ ἐκεῖνο, τὸ δοῦναί οἱ δεομένῃ στρατιήν. τοῦτο ἐπὶ παντὶ γὰρ τῷ διδομένῳ ἔλεγε, τελευταῖόν οἱ ἐξέπεμψε δῶρον ὁ Εὐέλθων ἄτρακτον χρύσεον καὶ ἠλακάτην, προσῆν δε καὶ εἴριον. ἐπειπάσης δὲ αὖτις τῆς Φερετίμης τὠυτὸ ἔπος, ὁ Εὐέλθων ἔφη τοιούτοισι γυναῖκας δωρέεσθαι ἀλλ᾽ οὐ στρατιῇ (4.162.3-5)

Euelthon expresses a gender norm: the spindle was the archetypal gift for a woman symbolising her role within the household.[654] Mitchell notes the Homeric echo, when Hector tells Andromache to go to her loom and distaff, because war is men's work (Hom. *Il*. 6.490-3).[655] Through her repeated refusal of these gifts and her request for an army, she is shown to reject the gender performance expected of her, though her high status as guest-friend is recognised by Euelthon.

However, the political context for this request is significant. Arcesilaus and his mother Pheretime are shown to reject the settlement introduced by the external mediator, Demonax of Mantinea, which limited the power of the king, reserving certain religious functions to the king but placing all other rights and privileges with the Cyrenean people (τὰ ἄλλα πάντα τὰ πρότερον εἶχον οἱ βασιλέες ἐς μέσον τῷ δήμῳ ἔθηκε, 4.162.3).[656] Both mother and son resist constitutional change, seeking to restore tyrannical *nomos*, and there is a parallel between this

[654] Iriate 2013: 110.
[655] Mitchell 2012: 10-11.
[656] Asheri 2007: 687-690.

and Pheretime's rejection of the gender performance expected of her, I suggest, in that she is shown to disregard both gender and political *nomoi*.

After her son's death at the hands of men from Barca, Pheretime persuades the Persian governor of Egypt, Aryandes, to put an army at her disposal (4.167). These forces besiege Barca until the Barcaeans are tricked into letting the Persians enter the city and Pheretime takes revenge, using the characteristic punishment by mutilation of a tyrant, but also signalling gender reversal in that the men are penetrated, the women deprived of their maternal capacity, making this a 'horrific tableau' of sexualised barbarity.[657]

> The Barcaeans who had played the biggest part in her son's death were handed over to Pheretime by the Persians, and she had them impaled at intervals all around the city walls. She also had their wives' breasts cut off and displayed here and there on the city walls too
>
> τοὺς μέν νυν αἰτιωτάτους τῶν Βαρκαίων ἡ Φερετίμη, ἐπείτε οἱ ἐκ τῶν Περσέων παρεδόθησαν, ἀνεσκολόπισε κύκλῳ τοῦ τείχεος, τῶν δέ σφι γυναικῶν τοὺς μαζοὺς ἀποταμοῦσα περιέστιξε καὶ τούτοισι τὸ τεῖχος (4.202.1)

Herodotus is clear as to the consequences of her overstepping boundaries:

> Pheretime came to a bad end as well ... she died a horrible death. She became infested with a mass of worms while still alive, as if to show people that excessive vengeance is looked on with jealousy by the gods

[657] Iriate 2013: 108-110 - l'inversion brutale des rôles sexuels impliquée dans ce tableau d'horreur'.

οὐ μὲν οὐδὲ ἡ Φερετίμη εὖ τὴν ζόην κατέπλεξε ... ἀπέθανε κακῶς: ζῶσα γὰρ εὐλέων ἐξέζεσε, ὡς ἄρα ἀνθρώποισι αἱ λίην ἰσχυραὶ τιμωρίαι πρὸς θεῶν ἐπίφθονοι γίνονται (4.205)

Pheretime asks for an army and rejects the spindle, showing a disregard for the constraints of *nomos*, and her gender transgression is a large part of her excess, as is her cruelty and barbaric practice, but Herodotus' judgment on her death suggests that she is punished ultimately for overstepping the limits set by the gods on human vengeance rather than for her violation of gender norms.[658] In this way, I think she is portrayed as more than a cruel and sadistic queen, she is marked by a number of excesses. The end of the story makes it clear that the issue is not just her gender but the same problem highlighted in other stories of male tyrants: power corrupts her, and she oversteps the limits of acceptable human behaviour. Like Cyrus and Xerxes, she is punished for violating the rule of law in its wider sense.

Conclusion

In the Athenian city-state, the binary opposition of genders is highlighted by an ideology of female inferiority that goes hand in hand with the exclusion of women from male, political power. However, the ideology still has a firm hold even when women do exercise power and leads some men to underestimate female capacity. Cyrus thinks Tomyris will be tricked into surrendering her power through a marriage alliance and does not take her advice or warnings seriously. In fact, it is Cyrus who fails to live up to the normative gender performance expected of a Persian man and king, seeking to defeat the Massagetae through a trick rather than through bravery in battle. The performance of *andreia* as warlike masculine valour is by

[658] Dewald 2013b: 168n.24; Mitchell 2012:10-11.

Tomyris, not by him. Xerxes and Artemisia both articulate the binary opposition of male and female. Xerxes, however, is shown to misread the actions both of his men and of Artemisia, casting them as cowards and the queen as brave. His defeat at Salamis, which makes him scared and forces him to retreat, fractures his omnipotence as Persian king. Meanwhile Artemisia, who survives as a free woman, both in speech and action, is very far from the ideological construct of the inferior woman yet her performance of *andreia* is not straightforward. Her ambiguous characterisation as brave in speech, the giver of good advice but also capable of treachery and deception is shown not to be a function of her gender, as these qualities, both positive and negative, are found equally in Themistocles. Herodotus also tells Pheretime's story as a warning on the excesses of mortal power more than female power.

He problematises the concept of *andreia* by showing, through the character of Artemisia, that it is not the straightforward virtue of military prowess and bravery, which necessarily excludes women. Both Artemisia and Themistocles are shown to be powerful people who can, to a degree, escape the constraints of *nomos*, managing relationships successfully, in the case of Artemisia, at Xerxes' court, in the case of Themistocles, in the male hierarchy of the Greek commanders.

To conclude, Herodotus destabilises the binary opposition of male and female by showing the disjuncture between the rhetoric of female inferiority and the agency and authority of women in his wider narrative. He characterises men and women in a nuanced and complex way, and undermines the stereotype of the powerful woman who, for example wields power through trickery, or whose public interventions lead to disaster for the wider community. He shows men who do not live up to gender expectations, as well as women who defy those

expectations. However, Cyrus, Xerxes and Pheretime all go beyond acceptable human boundaries, thus suggesting that it is *hubris* which is their ultimate downfall.

CHAPTER 6: CONCLUSION

In my introduction, I argued that we should consider the rule of law to be a concept which has to be debated and which has a 'thick' and a 'thin' aspect. From a gender perspective, I do not think it is sustainable to import a 'thick' definition of the rule of law into Herodotus' *Histories* because that definition relies on a commitment to universal human rights and to equality and non-discrimination which is both anachronistic and would be incomprehensible to Herodotus, let alone to his contemporary audience. However, I think it is possible to discern a 'thick' meaning of rule of law in the *Histories* if we consider the rule of law as a bulwark against those tyrannical regimes which flout the rule of law. The arbitrary use of power, and the lack of restraint on the exercise of that power, are hallmarks of most, but not all, tyrants in the *Histories*. Those who flout the rule of law do so by ignoring limits which are implicit in the unwritten laws of the gods and of communities, by exercising power in an arbitrary way, and by disregarding the rules which bind everyone. Gender transgression is a significant marker of this, so Cambyses, for example, not only laughs at religion and custom, and uses law to do what he wants, but also destroys his *oikos* through killing his wife/sister and unborn child. Does this mean, therefore, that the rule of law is incompatible with tyranny? Herodotus, I argue, gives us a more nuanced view in the character of Darius, whose dealings with Intaphrenes and his wife show both the coercive aspect of a tyrant who exercises the power of life and death, but also differing responses to the *nomos* of tyranny, from Intaphrenes and his wife, which lead to very different outcomes.

In matters of punishment, there are also limits on human vengeance as shown clearly by the fate of Pheretime, whose gender transgressions are linked to her political misjudgement in

trying, with her son, to subvert the constitution introduced by Demonax. As regards ambition, Xerxes' aim at conquering the entire world is part of a hubristic goal which ironically forces him to obey the Persian *nomos* of expansion, and which finds a parallel at the Persian court, when another type of *nomos* compels him, following his gender transgressions. Meanwhile Cyrus forgets the message of Solon, passed on to him by Croesus, to look to the end, but also underestimates the authority and power of Tomyris, who performs a more effective masculine role than he.

In terms of Herodotus' methodology, I have argued that he models for us a form of inquisitorial legal method which is not based on the adversarial model of the Athenian law courts and forensic oratory, but still requires legal skills of evidence-gathering, interpretation and judgment. I have applied this to the performance of gender by men as well as women and shown that Herodotus often shows appearance and speech to be deceptive, making it imperative to be able to interpret what one sees and hears, and to make a judgment on that. This is always in tension with the polarising model of ideology which, in gender terms, values the male over the female and creates a binary opposition of male and female.

I have argued for a much wider definition of *nomos* than the model which is appropriate for Athenian law, where we can debate how the institutions intersected with the individuals who used them. In the *Histories*, the institutions are of less significance than the characters, male and female, who engage with law in its various manifestations; as despot, as social regulation, as divine sanction, but also as tool, as agent of social cohesion, and as part of identity, to which individuals and groups are attached.

I have used modern analogies in the light of Loraux's plea for (controlled) anachronism; she asks the question 'if we really have so little in common with the Greeks how can we understand them'?[659] She acknowledges the dangers of asking questions the Greeks would not have asked and drawing conclusions which the texts themselves do not justify, but argues that we should make use of analogy as a means to understand and interpret these texts, paying attention to the language and motivation of the speaker. I apply this to Herodotus and agree that this is important for our reading of the *Histories* because Herodotus gives a subjective identity, the internal aspect of *nomos*, to some of his characters, and to groups of people, by attributing motivations, feelings and speech to them and requiring us to interpret his text. Reflecting on our own world and the role of conflict and war within it, I identify certain contemporary themes which link us to the world of Herodotus, in particular, the abduction and rape of women, the displacement of communities and the mass migration of peoples, and the cultural negotiations and conflicts which then arise, as well as the threat to the rule of law. I read the story of the Carian women as a creative response, the making of a new *nomos*, to a situation in which these women and their daughters have no formal power.

In the wider context, Herodotus juxtaposes stories of abducted mythical women used as justification for political alliances or acts of aggression, with stories of women as founders of cults and transmitters of social, religious and cultural values. In this way, the founders of the oracles at Dodona and Siwa and the priestesses who tell their story, acquire an identity, rather than being objects of exchange. However, in his wider narrative he also shows that the meeting of cultures may lead to antagonism and hostility rather than integration; in the story of the Aeginetans and the Athenians, female dress both symbolises the conflict between *poleis*

[659] Loraux, 2005: 127-130.

and emphasises the differences between them. Herodotus, however, shows another aspect of the rule of law through gender relations in communities; how these can be undermined in war, leading to, for example, the Athenian women's actions in killing the survivor of the Aegina campaign, and in joining with men in killing Lycides and his *oikos*. He also shows that those who destroy their own *oikos* break a fundamental rule of law, that imposes an obligation to protect it, and avoid the empty *oikos*.

He also shows that those with power can escape the constraints of *nomos* to a degree, by manipulating the rules to achieve a desired outcome. Anaxandridas and Argeia both regard *nomos* as something which can be changed through negotiation, rather than being the despot to which Demaratus introduces Xerxes. Artemisia manages to perform effectively as a free agent, despite the constraints of the Persian court, and negotiates both male and female roles successfully. However even those without power can have some agency, like Cyno under the oppressive regime of Astyages, when she asserts her commitment to the rule of law in a 'thick' sense, protecting the *oikos* which Astyages seeks to destroy. The Carian women respond to their oppressive situation by creating *nomos*, asserting their authority to settle arrangements and discourse within the *oikos*, and using the coercive power of oaths to pass that *nomos* onto daughters. Candaules' wife is unusual in being the judge in her own cause, and asserting the rule of law in her marital relations, yet most of her audience would recognise that Candaules had acted unlawfully.

The rule of law in the *Histories* is a normative ideal. Herodotus shows how often it is broken, undermined, and distorted, usually by those who have the power to disregard the rules. However, he also shows the consequences for those who do so, and he thereby asserts the rule

of law over everyone. Though we cannot identify in Herodotus a concept of universal human rights, I think we can discern a belief in a concept of universal values, which acts as a check on the powerful as well as the rest of society. I am writing this conclusion at a time when, in the UK, the executive is exercising the royal prerogative, parliament is asserting its sovereignty, and the judiciary is being asked to adjudicate, making the rule of law a live issue which is being debated and contested in the context of Brexit. On 24th September 2019, the Supreme Court decided that the prime minister had acted unlawfully in advising the queen to prorogue parliament, referring to a 17th CE case (Case of Proclamations (1611) 12 Co Rep 7) which held that "the King hath no prerogative, but that which the law of the land allows him".[660] The Supreme Court also reasserted the principle that 'every prerogative power has its limits' and that ministers are accountable to Parliament, to ensure due scrutiny and to protect citizens from 'the arbitrary exercise of executive power'.[661] The law lords thereby declared the rule of law. In Gina Miller's words, 'our laws are all that protect us from tyranny and before them we are all equal'.[662] It is a sentiment with which Herodotus would agree.

[660] [2019] UKSC 41 [32], [49]
[661] [2019] UKSC 41 [38], [46]
[662] The Guardian 30/08/19.

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